

SANTA FE

BOARD OF COUNTY COMMISSIONERS

REGULAR MEETING

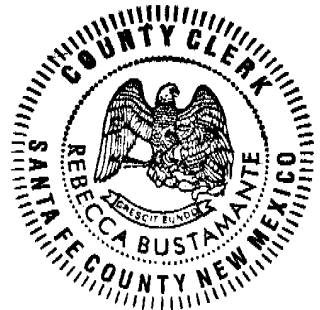
December 9, 2003

Jack Sullivan, Chairman
Paul D. Duran
Michael D. Anaya
Harry B. Montoya

COUNTY OF SANTA FE) BCC MINUTES
STATE OF NEW MEXICO) ss PAGES: 152

I Hereby Certify That This Instrument Was Filed for
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Deputy  Witness My Hand And Seal Of Office
Rebecca Bustamante
County Clerk, Santa Fe, NM



SANTA FE BOARD OF COUNTY COMMISSIONERS

COMMISSION CHAMBERS

COUNTY ADMINISTRATION BUILDING

REGULAR MEETING
(Public Hearing)
December 9, 2003 -3:00 p.m

Amended Agenda

- I. Call to Order
- II. Roll Call
- III. Pledge of Allegiance
- IV. Invocation
- V. Approval of Agenda
 - A. Amendments
 - B. Tabled or Withdrawn Items
- VI. Approval of Minutes *November 18, 2003 = corrections By Sullivan + Montoya*
- VII. Matters of Public Concern -NON-ACTION ITEMS *- amanda Montgomery - Turq. Trail School. Bert Waldo = Patricia Lopez*
- VIII. Matters from the Commission
 - A. Discussion of Possible Joint Powers Agreement between Santa Fe County, Bureau of Land Management and the State Land Office Regarding the Clean-Up of the La Cienega Area *presented by Comm. Anaya*
- IX. Committee Appointments/Reappointments/Resignations
 - OK* A. Request Appointment of Dr. Susan Cave to the Corrections Advisory Committee
- X. Presentations
 - A. Presentation of the New Mexico Medal of Merit to James Leach by Col. Barry Stout **TABLED**
 - B. Presentation of Joint County of Santa Fe - Youth Shelters & Family Services Best Practice Award for the Newly Constructed Youth Shelters
 - Tabled* C. Final Report of the Fiscal Impact Study for the Santa Fe Community College District (Presentation will be Made by Dan Guimond of Economic Planning Systems, Inc. (EPS) of Denver)
- XI. Consent Calendar
 - OK* A. CDRC CASE # A 03-5720 - Monte Alto Homes & Land Inc. Appeal (Denied)
 - B. CDRC CASE # A/V 03-5700 - Manuel Duran Appeal Variance (Approved)
 - OK* C. Request Authorization to Enter into a Sole Source Price Agreement # 24-0080-FD for Structural Firefighting Apparel for the Santa Fe County Fire Department (Fire Department)
 - OK* D. Request Authorization to Accept and Award a Price Agreement to the Lowest Responsive Bidder for RFP # 23-60 for a Quint Telescopic Apparatus for the Santa Fe County Fire Department (Fire Department)

- OK* E. Request Ratification and Approval of Amendment #3 to the Professional Services Agreement # 22-0028-FI-A with Basham & Basham, PC for Legal Services (Legal Department)
- OK* F. Resolution No. 2003 *172* A Resolution Requesting Funding through the 2003/2004 New Mexico Department of Transportation's Local Government Road Fund Program (Public Works Department)
- N/A* G. Request for Approval and Execution of the Grant Agreement for the Rufina Street to Agua Fria Road Sewer Line Extension, SAP Project 03-0349-STB from the New Mexico Environmental Department (Utilities Department) TABLED
- N/A* H. Request for Approval and Execution of the Grant Agreement for the Santa Fe County Wastewater System Improvements, SAP Project 03-0352-STB from the New Mexico Environmental Department (Utilities Department) TABLED
- N/A* I. Request for Approval and Execution of the Grant Agreement for the Santa Fe County Water System Improvements and Easements, SAP Project 03-0394-STB from the New Mexico Environmental Department (Utilities Department) TABLED

XII. Staff and Elected Officials Items

A. Administrative Services

- approved 1.* Request Approval of Collective Bargaining Agreement Between AFSCME and Santa Fe County
- approved 2.* Request Approval of Santa Fe County Classification and Pay Plan Effective January 11, 2004

B. Fire Department

- 1. Moved to Consent
- 2. Moved to Consent

C. Utilities Department

- OK* 1. Consideration of Contract Amendment for Extension of Time to Submit Final Plat for Development by John J. McCarthy on State Land Office Property in the Community College District

D. Matters from the County Attorney

OK **1. Executive Session**

- a. Limited Personnel Issues
- b. Pending or Threatened Litigation
- c. Discussion of Bargaining Strategy Preliminary to Collective Bargaining Negotiations
- d. Acquisition or Disposal of Real Property
- e. Discussion of Possible Purchase, Acquisition or Disposal of Real Property or Water Rights

E. Matters from the County Manager

XIII. Public Hearings

A. Land Use Department Items

- 2-2-04* 1. **CDRC CASE # A/V 03-5741 – Samuel Ortiz Variance.** Samuel Ortiz Applicant is Appealing the County Development Review Committee's Decision to Uphold the Land Use Administrator's Decision to Deny the Placement of a Third Home on 2.01 Acres, Which Would Result in a Variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code. The Property is Located on 1 Paseo de Antonio in the Traditional Community of Cuyamungue within Section 20, Township 19 North, Range 9 East (Commission District 1). Wayne Dalton

Upheld

EZ CASE # A 03-4851 – Miller Family Transfer Appeal. Sandra Blakeslee and Carl Moore, Appellants, are Appealing the EZC's Decision to Approve the Neil Miller Family Transfer Land Division (EZ CASE # DL 03-4850) to Divide 3.38 Acres into Two Tracts. The Property is Located at the Intersection of Fin Del Sendero and Camino Delilah, within Sections 8 & 9, Township 17 North, Range 9 East (Commission District 2). Victoria Reyes

Approved w/conditions

CDRC CASE # V 03-5155 – John Work Variance. John and Victoria Work, Applicants, are Appealing the Decision of the County Development Review Committee to Uphold the Land Use Administrator's Decision to Deny a Variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code. The Property is Located at # 17709-C HWY 84/285, within Section 28, Township 19 North, Range 9 East (Commission District 1). Dominic Gonzales

Approved w/conditions

EZ CASE # S/V 96-4345 – Aldea L.L.C. Aldea L.L.C. (Arthur Fields), Applicant is Requesting and Final Plat and Development Plan Approval for a Residential Subdivision of 50 Lots on 11.59 Acres in Accordance with the Previously Approved Master Plan and a Variance of Section 3.4.7.B.1 of the Extraterritorial Subdivision Regulations Restricting Lot Sizes to Less Than 2,000 Sq. Ft. The Property is Located Off Avenida Frijoles within Section 20, Township 17 North, Range 9 East (Commission District 2). Vicente Archuleta

Will be approved
Approved w/conditions

EZ CASE # S 03-4760 – Hacienda del Corazon at Las Campanas. C.R. Walbridge, Agent, is Requesting Final Plat and Development Plan Approval for 5 Residential Lots on 7.46 Acres in Accordance with the Previously Approved Master Plan. The Property is Located Off of Las Campanas Drive, at the Intersection of Trailhead Drive and Clubhouse Drive, within Section 11, Township 17 North, Range 8 East (Commission District 2). Vicente Archuleta

Approved w/conditions

6. **CDRC CASE # MIS 01-5012 – Santa Fe Downs Reconsideration of Conditions.** Pojoaque Pueblo Development Corporation Requests the Reconsideration and Clarification of Conditions that were Imposed on the Previously Approved Master Plan for the Santa Fe Downs, Which Requires the Applicant to Submit a Manure Removal Plan within 2 Years of Master Plan Approval, as Well as to Install a Monitoring Well to Monitor the Effects the Manure Pile May Have on Ground Water. The Property is Located Southwest of the Intersection of I-25 and SR 599, (Downs at Santa Fe), within Sections 26 & 27, Township 16 North, Range 8 East (Commission District 3). Vicki Lucero

Tabled

7. **CCDR CASE # Z/DP 00-5302 – Sandia Vista Commercial Property.** Sonny Otero, Applicant, Michael Bodelson, Agent, Request a Master Plan Amendment with Preliminary and Final Development Plan Approval for Six Additional Warehouse Buildings Ranging in Size from Approximately 8,000 Sq. Ft. to 10,800 Sq. Ft. for Commercial and Light Industrial Uses and Storage on 5.4 Acres. This Request Also Includes Multiple Variances which Would Allow the Applicant to Utilize an On-Site Well and Septic System Rather than a Public Water and Community Wastewater System; to Exceed 30% Lot Coverage; to Reduce the Amount of Open Space Below 50%; and to Reduce the Parking Below What is Required by

County Code. The Property is Located Off of State Road 14, North of the Intersection of NM 599 and SR 14 within the Community College District, within Section 25, Township 16 North, Range 8 East (Commission District 5). Vicki Lucero

8. **EZ CASE # S 03-4770 – High Summit III Subdivision. High Summit Corp. Ralph Brutsche, Applicant, Karl Sommer, Agent, Request Final Development Plan and Plat Approval for a Residential Subdivision Consisting of 105 Lots with 107 Dwelling Units on 150 Acres, and a Single Tract (Tract “K”) Consisting of 342.3 Acres in the MSRD. This Request also Includes the Following Variances of the Extraterritorial Subdivision Regulations: To Allow Two Cul-de-Dacs with Lengths Greater than 1,000 Feet and to Allow the Replacement of Standard Curb & Gutter with Stone. The Property is Located Off Hyde Park Road (State Road 475), Southeast of the Summit Subdivision within Sections 15, 16, 21 and 22, Township 17 North, Range 10 East (Commission District 1). Vicki Lucero**

XIV. Adjournment

The County of Santa Fe makes every practical effort to assure that its meetings and programs are accessible to the physically challenged. Physically challenged individuals should contact Santa Fe County in advance to discuss any special needs (e.g., interpreters for the hearing impaired or readers for the sight impaired).

SANTA FE COUNTY

REGULAR MEETING

BOARD OF COUNTY COMMISSIONERS

December 9, 2003

This regular meeting of the Santa Fe Board of County Commissioners was called to order at approximately 3:10 p.m. by Chairman Jack Sullivan, in the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

Following the Pledge of Allegiance, roll was called and indicated the presence of a quorum as follows:

Members Present:

Commissioner Jack Sullivan, Chairman
Commissioner Paul Duran
Commissioner Mike Anaya
Commissioner Harry Montoya

Members Absent:

Commissioner Paul Campos

IV. Invocation

An invocation was given by Reverend Seto of the Presbyterian Church.

V. Approval of the Agenda

A. Amendments

B. Tabled or withdrawn items

CHAIRMAN SULLIVAN: Gerald, would you discuss the changes with us?

GERALD GONZALEZ (County Manager): Yes, Mr. Chair. We have a tabling under Section X, presentations, item A. There's a request to table that until January because we couldn't have all the individuals here at the same time. We have under Section XI, Consent Calendar two additional items that have been moved to the Consent Calendar from Section XII. B. Fire Department. That's items C and D under the Consent Calendar. Also under the Consent Calendar, items G, H, and I have been tabled because the documentation was not timely

received for the Commission's benefit.

Under Section XII, Staff and Elected Officials' items, Administrative Services, we have the addition of two items, one is request approval of collective bargaining agreement between AFSCME and the County and the second is request approval of the County's classification and pay plan, effective January 11th. Then as I noted under B, those items have been moved to the Consent Calendar.

And then finally, in Section XIII. Public Hearings, under Land Use Department there has been a request by the applicant and it is concurred in by staff to table item number 7, involving the CCDRC Case, Sandia Vista commercial property. And that's all the changes that I have at this time, Mr. Chair.

CHAIRMAN SULLIVAN: Thank you, Gerald. Let me ask one question then we'll get Commissioner Duran. On the CCDRC Sandia Vista commercial property, that was tabled at the last meeting as well, correct?

MR. GONZALEZ: Yes and my understanding is that the direction from the Commission was that the parties should work out the issues that were outstanding. There has been some movement but there's still a couple that they haven't quite settled.

CHAIRMAN SULLIVAN: In reading the staff report on that item it said that there had been no movement, that the applicant hadn't made any attempt to address those issues. Has something changed?

MR. GONZALEZ: I'll defer to --

COMMISSIONER DURAN: I think I can help answer that. I've met with the applicant.

CHAIRMAN SULLIVAN: Okay, Commissioner Duran.

COMMISSIONER DURAN: The applicant has met with staff at the Utility Department concerning the water availability issues. He's met with the Fire Department concerning the fire issues. And I believe that there's some engineering that needs to be done that hasn't been completed. In any case, he has met with everybody. He's trying to provide them with the information that they require but he needs more time to do that. With the holidays here it was hard to find an engineer to climb on board and work with him on staff's concerns.

CHAIRMAN SULLIVAN: I think there are also issues of lot coverage and parking. Is he working on those too?

COMMISSIONER DURAN: Those are variances. I don't know. All I know is he is working with staff. Whether or not he's --

CHAIRMAN SULLIVAN: Okay. I was just seeing the staff report that says there haven't been any changes or discussions. Okay, so there's a request that that be tabled.

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, and I also met with the applicant along with the Fire Department. So I thought they were getting those issues taken care of.

CHAIRMAN SULLIVAN: So they're starting to respond to some of those

issues. Okay. So we're okay with tabling item 7 then.

COMMISSIONER MONTOYA: Mr. Chair, move for approval of the agenda.

COMMISSIONER DURAN: Mr. Chair, before we do that, I had a request.

CHAIRMAN SULLIVAN: Okay. Commissioner Duran.

COMMISSIONER DURAN: I'm on the EZA and the last case in the Land Use section is EZ Case #S 03-4770 and we had that last on the agenda. In the past when we've had controversial projects come before us, maybe controversial isn't the appropriate way to characterize this but developments that a large number of people come to speak, either for or against, I've found that having it at the very end of the meeting isn't the most prudent thing to do. And I don't know if we want to move it to the front but I'd like to make a request that we move this case to somewhere in the middle so that those that thought it was going to be at the end would have time to get here and --

COMMISSIONER MONTOYA: We could move it to number 7.

CHAIRMAN SULLIVAN: Would you like to move it to number 7?

COMMISSIONER DURAN: I think it automatically moved to 7, didn't it? So my request would be that we move it to, say, number 4. And then just slip everything down one.

CHAIRMAN SULLIVAN: Number 6, Santa Fe Downs, might also have a number of people too. I don't know how we deal with situations where people are anticipating they'll be at the end of the meeting. I'm okay to put it wherever you all want to put it. What's the feeling of the others? Commissioner Anaya?

COMMISSIONER ANAYA: I'd put it where number 4 is.

CHAIRMAN SULLIVAN: Do you want to put it after number 4?

COMMISSIONER ANAYA: After 4.

COMMISSIONER DURAN: After 4 is fine.

CHAIRMAN SULLIVAN: And Commissioner Montoya? Okay. All right. We'll put it after number 4. When we get there I'll ask if there's anyone in the audience that knows of someone that's planning to come for it and hasn't shown up or something of that sort so we can try to accommodate them. I did have one concern on the agenda which I expressed to Gerald having to do with the report on the fiscal impact study of the Community College District. We had asked that that be given to us in draft form two weeks ahead of time and it was put in our packets but it's a very complex report and I asked if we could put that off to a later work session. He checked and I guess the consultant is in town is here anyway so if the Commission wants to we'll go ahead and have discussion of that item or we can do it later on. But it's a fairly complex study. Does everyone want to hear it today?

COMMISSIONER DURAN: I'd like to hear it another time, actually, after I've had time to read it. And Commissioner Campos isn't here. I'm sure he would like to participate.

CHAIRMAN SULLIVAN: I think so too. That was my feeling, but it's up to the Commission. Whatever you like.

MR. GONZALEZ: Mr. Chair, I understand that they're willing to do both,

which would be a presentation today and come back and do a study session at a later time as well.

CHAIRMAN SULLIVAN: Well, I think we need more than a presentation. I think if we're going to get into it we need to get into it full bore as a part of it, rather than just have a presentation and call it good. I think we need to delve into it and ask questions as we go along. It's an in-depth report and has some ramifications. So I think -- I don't know that just a presentation is going to help us too much.

COMMISSIONER DURAN: That's a three-hour meeting.

CHAIRMAN SULLIVAN: It might well be. And a work session may well be appropriate for this type of report. I have an hour's worth of questions.

COMMISSIONER DURAN: I bet you have two.

MR. GONZALEZ: About a work session, either later this month or we could extend their contract I suppose and set it for January sometime.

CHAIRMAN SULLIVAN: I understand they were in town on other business anyway.

MR. GONZALEZ: That's correct.

CHAIRMAN SULLIVAN: So we haven't inconvenienced them. I'm glad of that. I would prefer in January myself and set up a work session and spend the two to three hours that we may need on this because we're dealing with an area that's of real importance in Santa Fe County's future.

MR. GONZALEZ: We do have them here if you'd like to direct any questions directly to them, Mr. Chair.

CHAIRMAN SULLIVAN: Well, I appreciate their attendance and I appreciate their promptness in getting us the study, but we just haven't had time to review it. Unless there's objection from the Commission I'd like to have that item tabled as well

COMMISSIONER DURAN: I second that.

CHAIRMAN SULLIVAN: We had a motion, Commissioner Montoya I believe was going to make a motion for approval of the agenda as amended.

COMMISSIONER MONTOYA: As amended.

COMMISSIONER DURAN: With your amendment and my amendment and all of them.

CHAIRMAN SULLIVAN: All the amendments.

COMMISSIONER DURAN: Okay. Second.

CHAIRMAN SULLIVAN: Discussion?

The motion to approve the agenda as amended passed by unanimous [4-0] voice vote.

VI. Approval of the Minutes: November 18, 2003 (Special Meeting)

CHAIRMAN SULLIVAN: I had three minor corrections. Does anyone else have any changes to the minutes?

COMMISSIONER MONTOYA: Mr. Chair, I have some as well.

CHAIRMAN SULLIVAN: Okay. Commissioner Montoya has a few, typographical in nature.

COMMISSIONER MONTOYA: Yes. Exactly.

CHAIRMAN SULLIVAN: Any others? Right, what's the pleasure of the Commission?

COMMISSIONER DURAN: Move for approval.

COMMISSIONER ANAYA: Second.

CHAIRMAN SULLIVAN: Motion Commissioner Duran, seconded by Commissioner Anaya.

The motion to approve the minutes as corrected passed by unanimous [4-0] voice vote.

VII. Matters of Public Concern - Non-action items

CHAIRMAN SULLIVAN: These are non-action items that we invite the public to come before the Commission and present any issues that they feel are important to them. We have, I believe, two people that I'm aware of today. One, Gerald informed me of, representing the flea market. Is that correct, Gerald?

MR. GONZALEZ: Correct, Mr. Chair.

CHAIRMAN SULLIVAN: And also we have an individual, a Ms. Amanda Montgomery representing Turquoise Trail Elementary School here today and again, anyone else is also invited. So without further ado, let's begin with Turquoise Trail since Ms. Montgomery is sitting up front here.

AMANDA MONTGOMERY : Thank you. Good afternoon. My name is Amanda Montgomery and I represent Turquoise Trail Elementary Charter School. We are located south of town on Highway 14. I'm here basically just to tell you a little bit about a program that we have started in conjunction with Big Brothers/Big Sisters. It's a mentoring program. And I wanted to let the Commissioners know about it and the staff, the County employees, and also any other community members that might be interested in making a difference in the life of a child.

Basically, we are starting a Lunch Buddies program and volunteers will come to the school for an hour a week and work one on one with a child and they'll spend half their time tutoring and half their time mentoring, developing a relationship with the child. And I just wanted to get the word out to all of you and to recognize the fact that you do have a program

that encourages your employees to volunteer and I appreciate that, and to see if maybe you or any of your employees would like to volunteer. For further information I can be reached at Turquoise Trail Elementary, and I also just wanted to add on a different note, we have some wonderful artists at this school and as I was walking down the halls I thought maybe some of our artists would be honored to brighten your hallways with some of their work. So if anyone would like to do that you can contact me about that as well. And that's all.

CHAIRMAN SULLIVAN: Sounds like a great idea.

MS. MONTGOMERY: I don't know if you have any questions, but thank you.

CHAIRMAN SULLIVAN: Commissioner Duran.

COMMISSIONER DURAN: I have one comment. About a year and half ago, maybe two, the mentoring program here in town requested that the Commission consider granting not annual leave but comp time to employees that wanted to participate in a mentoring program. So you might want to contact Helen at Human Resources and ask her to insert in the pay-stubs a notice that reminds them or introduces them to your program and reminds them that they can get comp time for contributing to your program.

MS. MONTGOMERY: Thank you very much. That's a wonderful idea.

COMMISSIONER DURAN: Okay. Thank you.

CHAIRMAN SULLIVAN: And as I understand it, Amanda, this doesn't necessarily have to be at lunch. Is that correct?

MS. MONTGOMERY: No, it's called Lunch Buddies but it can be done at a convenient time for the person who'd like to volunteer.

CHAIRMAN SULLIVAN: On the way into work.

MS. MONTGOMERY: Way into work, way home. It has to be done during the school day, but it could be on the way in.

CHAIRMAN SULLIVAN: School day ends at what time?

MS. MONTGOMERY: Turquoise Trail it ends at 2:40. So maybe on the way in.

CHAIRMAN SULLIVAN: Maybe people coming in from the south part of time might be able to participate in this.

MS. MONTGOMERY: Yes. And people have the perception that Turquoise Trail is far from town but literally, from the south side of town it's ten, fifteen minutes, depending on where you're coming from. So it's not that far of difficult to reach.

CHAIRMAN SULLIVAN: And it is a charter school.

MS. MONTGOMERY: It is indeed.

CHAIRMAN SULLIVAN: Okay. So if you'd like to see how a nice charter school operates go out to Turquoise Trail. You'll meet some nice people out there. Okay, and then I had also mentioned someone representing the flea market. Would you like to come forward?

BURT WALDO: Hi. My name is Burt Waldo. This is Frank Clyde.

CHAIRMAN SULLIVAN: You're named after a famous interchange, Mr. Waldo. Did you know that? I'll leave it at that. You can find out where the Waldo interchange

is.

COMMISSIONER DURAN: It leads to nowhere.

CHAIRMAN SULLIVAN: On your way out of town. Excuse me. Go ahead.

FRANK CLYDE: It's one of those circles that keep going around, like in England.

CHAIRMAN SULLIVAN: No, no. It's not quite that complicated.

MR. CLYDE: We would like to submit a request to lease property at the business park out on Route 14 for the purpose of putting in an outdoor market. All of the information is provided in this packet as to why and how it would be done. And staff, we met with staff this morning and they felt that this would be a good idea to rub elbows with the powers that be and include them in to what our plan is going to be.

CHAIRMAN SULLIVAN: Are you finished?

MR. CLYDE: Well, I didn't want to get into the negative part of this, but Santa Fe County is losing its treasure. The treasure had been the flea market under Trader Jack's flea market and it was rated number 3 in the country at one time.

CHAIRMAN SULLIVAN: I don't think we're losing our treasurer until the next election, are we? I hope not.

MR. GONZALEZ: I think he met treasure rather than treasurer.

CHAIRMAN SULLIVAN: Okay. Excuse me.

MR. CLYDE: Right now, the flea market is undergoing some drastic changes and may never recover. We are losing vendors at a phenomenal rate and it's time that we pulled away from that market place and created another market place that was more stable, more county-oriented, so that the vendors, the 400 vendors will have a solid foundation to be able to their business. Outlined in this is why and how we expect to do or hope to do this with the County's permission and help. So if you have any questions.

CHAIRMAN SULLIVAN: Commissioner Anaya.

COMMISSIONER ANAYA: You're talking about the market that was up on top of the hill there by the opera? Is that what you're talking about?

MR. CLYDE: Yes.

COMMISSIONER ANAYA: And why did it relocate?

MR. WALDO: Well, it hasn't relocated but that's why we're proposing to relocate it.

COMMISSIONER ANAYA: Why do you want to move it from there?

MR. WALDO: Because it's dying there and there's a lot of negative reasons I don't want to stress, but it's imploding. It will destroy itself.

COMMISSIONER ANAYA: Thank you.

COMMISSIONER DURAN: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Duran.

COMMISSIONER DURAN: They shut it down already, isn't that correct?

MR. WALDO: They did. With 48 hours notice, I might add.

COMMISSIONER DURAN: And where did most of those people go?

MR. WALDO: Most of them went home with their winter merchandise and were unable to latch on to good shows to sell it, because they had no notice. They had no notification.

COMMISSIONER DURAN: I heard that the Pueblo was going to reopen it in the spring. Have you heard that?

MR. WALDO: I've heard it said, yes, but they've not taken any money or anything.

COMMISSIONER DURAN: And the reason for them shutting it down was --

MR. WALDO: To sell all the dirt to the state.

COMMISSIONER DURAN: I heard that something else was going to be built there. I don't think they can sell that land to the state though. It is sovereign land.

MR. WALDO: They didn't sell the land. They sold the dirt.

COMMISSIONER DURAN: Oh, the dirt. That's right. That's what I heard.

MR. WALDO: Eight feet of dirt. It's a bowl. Have you been out there since they've been working on it?

COMMISSIONER DURAN: No. So you're proposing to relocate the vendors to the business park that the County has.

MR. WALDO: I'm proposing to open a flea market there. Yes.

COMMISSIONER DURAN: On our 80 acres.

MR. WALDO: On part of it, yes.

COMMISSIONER DURAN: On how much of it?

MR. WALDO: I'm hoping to get 25 acres of it.

CHAIRMAN SULLIVAN: Other questions? Gerald, anything you want to add?

MR. GONZALEZ: Mr. Chair, members of the Commission, I wanted to make sure that the Commission had an opportunity to hear the request. We do know that there are approximately 400 regular vendors who have used the current market location in the past and approximately 300 day vendors or transient weekend vendors who have also used it. The reason I wanted to bring it to the Commission's attention is because potentially this could be a significant source of gross receipts revenues for businesses operating in the county area, and at the same time there is also some potential for doing economic development, some incubation and they've also discussed the possibility of doing educational and training programs using that as sort of the center place. And also performances and kind of an anchor for businesses in the southern part of the county.

CHAIRMAN SULLIVAN: How far along are we on getting our economic development contractor on board?

MR. GONZALEZ: My understanding is -- I'll turn it over to Roman, but the process is moving along as we speak.

ROMAN ABEYTA (Land Use Administrator): Thank you, Gerald. Mr. Chair, we are currently negotiating with a firm and we hope to have a contract before the Board of County Commissioners at the January 13th BCC meeting.

CHAIRMAN SULLIVAN: Okay. So this was something that this individual,

when hired, could also take under consideration to determine if it's something that fit within, perhaps on a temporary basis, within our development plans.

MR. GONZALEZ: That's correct.

CHAIRMAN SULLIVAN: We have a person coming on board in January who is going to be managing that park at least at the outset and coming up with a long-term plan for it so this is certainly something to consider.

MR. CLYDE: We understand. We would be happy to work with anyone that could provide the necessary acreage that we would need to put this together. And we can do it in a raw and temporary state, but a lot of this is for a final state which is fixed, some fixed buildings and a centrally located food market. And we also want to open it up to not only vendors but also to the farmers to bring in to the marketplace, and any other outdoor market events that would occur within the county. So it would be broad-based.

CHAIRMAN SULLIVAN: Okay, well thank you very much. I appreciate your input on this and we'll take a look at it in January. Do we have anyone else in the audience who would like to bring any matters before the Commission this afternoon? Yes, ma'am.

PATRICIA GALLEGOS LEYBA: Good afternoon. My name is Patricia Gallegos Leyba. I am here to represent myself and I have had a problem with the County of Santa Fe. It is getting very close to two years now and it is my understanding that the statute of limitations will run out and I will have no recourse except to proceed legally and I really do not want to do this.

I live in the Village of Agua Fria and a couple years ago the County received money to go in and fix our street through our village. As a result of that and because of the property that I'm on, it was dug down about four feet leaving my house in a very serious condition. I have talked to many people in the County system regarding my concerns for erosion and the drainage and the dangers that were left behind by the way that my house stayed sitting up on this hill. One of the dangers is that there is a ramp from the street that goes directly into my house with no curve or any kind of protection should a car be flying through there, they would fly directly into my house.

The driveway sits at about a 45 degree angle. My driveway used to be level with the street. Last year when it snowed, my family rolled out of the driveway onto the street of Agua Fria and if you know Agua Fria, you know that it is traveled very heavily. Fortunately nobody was killed or hurt. The County was aware of this. They came down. They graded a little bit. It did not change the problem. It did not resolve the problem. This morning with this morning's snow, my son slid out of the driveway onto the street and nearly hit a car.

It's very difficult for me to allow this to continue to happen because one of these times, one of my family members is going to slide out and get hurt or injured or someone else will. And this all the result of the way that it was left when the street was fixed. The erosion -- eventually the fence, the walls and my fences will go and then eventually it will be the walls of my house. The erosion has caused my mailboxes to be up on a hill that we have to climb to get our mail. It's very dangerous for all the people that have to be out there. I don't have a front driveway anymore. I have a U because the dirt continues to fall as the rain and the snow

continue to erode the driveway.

I have been working with the County or trying to work with the County since April of 2002 when I came to the County Manager at that time. James Lujan who is a director, went out there, saw the property, told me what would be done to fix it. It was never done. I've also worked with Gino. Mr. Martinez finally referred me to Jeff Trujillo who told me that I had to file a claim. I did file the claim. The adjuster went out there, looked at the driveway, said that there was nothing that the County was responsible for.

This has been an ongoing process. It is my understanding that my property should have been left at least the same as when the County went in there to do this upgrade and they didn't. They destroyed my property and they have created a very seriously dangerous situation which I cannot get anybody to take care of. It's long memo. There's a lot of pictures. It very much describes all the activities that have taken place.

What I'm here today to ask is that the County allow me to please hire a landscape company to come out and fix my driveway before someone gets killed. To come out and put whatever reinforcement walls I need to stop the erosion of my property. And to do this as soon as possible to avoid any further problems. Thank you.

CHAIRMAN SULLIVAN: Thank you, Ms. Leyba. Any questions for Ms. Leyba?

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Anaya.

COMMISSIONER ANAYA: Is James here? James, so what did we do there? We lowered the road? Is this Agua Fria Road? You live right off of Agua Fria? Okay. Do you know exactly where she's talking about, James?

JAMES LUJAN: Mr. Chair, Commissioner Anaya, yes, I do.

COMMISSIONER ANAYA: It looks like we came in there and we lowered the road.

MR. LUJAN: The road was designed and the grade was lowered in that section in that area. Yes, it was lowered.

COMMISSIONER ANAYA: Okay, so Patricia, one of your concerns I guess, from the picture that was taken here is that the dirt is moving on to the sidewalk. Is that one of your concerns?

MS. LEYBA: The dirt is eroding from my property line. What's happening is the foundation wall, the bottom of the foundation wall where my fence was was street level. It is now about, maybe about 2 1/2, 3 feet higher. All of that road is beginning to erode and fall down, not only to the sidewalk, but it's just eroding and it's falling off from the wall on down and what's happening is that the foundation wall of the fence itself is starting to, and will eventually fall. After my fence, then it's the wall to my house.

COMMISSIONER ANAYA: Okay. So James, what can we do? Is that our problem? I know we dug the road down. Do we need to stabilize that bank right there at the sidewalk?

MR. LUJAN: Mr. Chair, Commissioner Anaya, we've looked into it and the

soil is stable in that area. I don't have any funding to do anything else and we did go in and we looked at it so that's why it was turned over to legal to look into the situation because that's the way it was designed. I feel that it's a good design and it's still working. I guess if she wants other issues I think she should take it up with the Commission.

COMMISSIONER ANAYA: And the other issue, and I can see it from the pictures, is that it also lowered her driveway. So now she's saying that we're sliding. Is there any way -- in the future that we could pave that so that when they come up to that intersection they're not sliding in?

MR. LUJAN: Mr. Chair, Commissioner Anaya, we did do that. We went in and we lowered the grade in her driveway so it wasn't as steep as the design after the contractor pulled out of there. We did lower the grade. I guess she's saying they're still sliding.

COMMISSIONER ANAYA: Okay, now, I think personally that this is an issue where the terrain is coming back on to the sidewalk. Why did we lower the road? For what reason? Drainage?

MR. LUJAN: Drainage issues. The design called for that. Wilson and Company is the one who designed it. I wasn't here at the time it was designed. The grade was built and there's no excuse I wasn't here but it was designed that way, to match the grade so we didn't have a hump in that area and match the grade the rest of the way for drainage.

COMMISSIONER ANAYA: Thank you, James. Mr. Chair, I think this is a concern that we need to look at. Her foundation for her fence is caving in, or not caving in but deteriorating and I don't know what legal steps that we have to do but I think we need to somehow stabilize that so she doesn't have any more problems.

CHAIRMAN SULLIVAN: Ms. Leyba, is your house higher than the other ones around you, or is the same problem happening with your neighbors?

MS. LEYBA: My house is the highest. The church is pretty high but they just asphalted the driveway where they cut out and dug out. They asphalted that and so there's no drainage there but there's that asphalt, they covered that ramp that's creating the danger to my house. Mine is the highest. My neighbor on the other side, which I've also talked to many of these people about also, their house is also high. Their front wall is also starting to suffer from the erosion that's taken place. But mine is the highest.

CHAIRMAN SULLIVAN: Would it be possible, James, to take another look out there and see if there's some kind of a vegetative solution or something that wouldn't be a high cost. I know we could always put a retaining wall in or something like that or some railroad ties or something like that.

MR. LUJAN: Mr. Chair, members of the Commission, what I'll look at is maybe some slope blankets on those areas, out of concrete or asphalt, but the original request from her is that she wanted a wall entirely around her property, and that's when I told her we could not build a wall entirely around her property because yes, there was some effect to the front of it and that's when things started escalating from that issue. But I will look at slope blankets, either with concrete, maybe some asphalt or vegetation. I'll work with the front of it. I don't believe that we can work on the whole entire property because she's had some drainage

issues in the back of the property that were also addressed and that's when Jeff went out there and the safety officer looked at those issues. So some of it has also escalated into the property itself and that's when we said we couldn't do all of those items.

The items on the road, I don't see any problem. We can probably do that with maintenance. But the rest of the wall and around the property is what I thought we couldn't do.

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Anaya.

COMMISSIONER ANAYA: James, we had some extra material left over from the bridge. I don't know if you used it already, but I think this would be a good place for it to maybe just stabilize that bank a little bit and then that way the erosion won't slide off.

MR. LUJAN: Mr. Chair, Commissioner Anaya, we will look into that. Like I said, the original request from her was not so much the slope, it was the wall around the property. But we will look at it. I will definitely do something.

COMMISSIONER ANAYA: Thanks, James.

CHAIRMAN SULLIVAN: Commissioner Duran.

COMMISSIONER DURAN: I was just going to ask James if you could go out there, assess the situation and come up with some reasonable solution to her concerns and the erosion and the issues that have come up because of us sinking the road four feet. Anyway, why don't you come up with some answers for us, some solutions for us. Because I really think that we have some responsibility here.

MR. LUJAN: Sure.

CHAIRMAN SULLIVAN: Okay. Thank you, James.

MS. LEYBA: Could I just in closing please?

CHAIRMAN SULLIVAN: Sure. Go ahead.

MS. LEYBA: In your package there is a drawing or a sketch that I had drawn of what I understood would be the corrective measure that would take place. As you can see by the drawing it is the front view of the house. It is the part of the house that is facing the street. It is the part of the house that I have concern about. It is where the erosion is taking place. I asked that the retaining wall be put there, be filled with dirt to hold the dirt back so it would not erode any more. This is the front of the house; this is the part that faces the street. I never asked that a wall be built around my entire property. I own half an acre. That is so not true. I was just asking for the front of the house where the erosion is taking place and of course the two sides. That there be a retaining wall built so that the erosion will please stop.

I'm asking that my driveway be cut down to an angle that is reasonable so that the cars can stop sliding out of my driveway onto Agua Fria putting my family's life in danger. I am not asking that the County come in and fix anything on my property that is not related to the damage that they caused when they went in and dug out the road. That's all I'm asking. Thank you.

CHAIRMAN SULLIVAN: Thank you. Is there anyone else in the audience this afternoon who would like to address the Commission?

VIII. Matters from the Commission

A. Discussion of possible joint powers agreement between Santa Fe County, Bureau of Land Management and the State Land Office regarding the clean-up of the La Cienega area

CHAIRMAN SULLIVAN: We'll start to the left today. Commissioner Montoya.

COMMISSIONER MONTOYA: Mr. Chair, I don't have anything prepared today. No resolutions until next meeting.

CHAIRMAN SULLIVAN: No resolutions. All right. We kid you about your resolutions but your resolutions are good ones. Okay, let's go down the line. Commissioner Duran?

COMMISSIONER DURAN: I have nothing.

CHAIRMAN SULLIVAN: Okay, Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, thank you. First of all, I do have a resolution. I would like to recognize or announce the new employees of Santa Fe County. Shavon Keyhoe of Public Works Department, works at the transfer station, Eric Klokey, who's a new employee, works at the Assessor's Office, David Jaramillo, he works for the Sheriff's Department, a deputy cadet there, and Andrew Sanchez, Sheriff's Department clerk. So welcome to those guys.

Mr. Chair, I have today a resolution that I just wanted to run by you. It's not for adoption. There has been a few meetings in the La Cienega area in concern of the illegal dumping and the trash that has been out there and on your screens you will see and I will hand out some photographs of what is exactly taking place out there. What we are trying to do, Mr. Chair, Commissioners, is work together with the State Land Office, the BLM and City of Santa Fe, to work together so that we can take care of some of these illegal dumping issues. I want to thank Dominic and Robin for putting this slide show together and I want to thank Gene Portillo with the Land Use Department for going out with us on a site visit in the La Cienega area to take these pictures so that we could show you what is going on out there.

Now, with me I have a draft resolution, and if you'd like to make any changes or add anything we would welcome your concerns. I'll just go ahead and read a little bit about what we're trying to do here. Santa Fe County Resolution, a resolution addressing concerns for La Cienega and its need for environmental clean-up and safety measures. Whereas, an integral concern of the Board of County Commissioners is to provide a safe and clean environment for all Santa Fe County residents; and whereas, in order to educate the public regarding a safe, clean environment it is necessary to involve as many interested parties as possible; and whereas, in order to effectively represent all Santa Fe County residents it is imperative that constituent needs continue to be a priority and be addressed in a timely manner; and whereas, an issue of concern from Santa Fe County residents concerning the cleanliness and safety of a particular area known as La Cienega has been addressed; and whereas, the collaborative efforts along local, state and federal agencies, we will work with residents of La Cienega and the

beautification process of their community; and whereas Santa Fe County, its employees and concerned citizens take pride in the well-being of their community.

So Mr. Chair, I just wanted to bring to your attention that probably December 16th we will have BLM here. We've already held about two meetings. The State Land Office, City of Santa Fe and the County, to talk more about this. And I open it up to any suggestions that you might have and I know that we have José Varela López here if he would like to say anything. He's been involved in this meeting and I'll just open that up.

CHAIRMAN SULLIVAN: Thank you, Commissioner. It looks like it might be a good idea to also involve the Sheriff. I'm looking at that hot water heater, that it's being used as a target range out there which I'm sure is in violation of ordinances but Commissioner Varela López, welcome and tell us a little about this.

JOSE VARELA LOPEZ: Thank you, Mr. Chair, Commissioners. I really appreciate Commissioner Anaya going out to La Cienega and La Cieneguilla and looking at our concerns. There is a lot of dumping out there and another concern is shooting. As Commissioner Anaya alluded to, we have had a few meetings and I think it's very important to be able to address this situation by having the State Land Office and BLM and the Forest Service and the City of Santa Fe and the County Sheriff's Office all working as one group because if we don't do that we're not going to get a hold of the situation.

I live in La Cieneguilla right down where the canyon starts and you have AK-47s going off all afternoon into the night and same thing happening on BLM land on the La Cienega side so being down in the canyon you never know which way the shots are coming from and it's a real bad situation. We were also informed by Leonard Bird from the BLM that I believe on one occasion or possibly two that they've caught folks up on the mesa where we have property in that general area cooking meth. They have like portable meth labs up there. As you saw in some of those photos there's a whole bunch of trash and BLM cannot keep a whole -- they only have one clean-up a year with people from the community and also folks from the City and they can't keep up with the trash.

If we can do some joint effort I think it would behoove us all to work on this as diligently as we can for the betterment of our community and I appreciate your time. Thank you.

CHAIRMAN SULLIVAN: Thank you, and Commissioner Anaya as well for working on this issue. Go ahead, Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, thank you. Thank you, José. You did mention the Sheriff's Department and the Sheriff's Department is involved. The BLM, State Forestry Office has Leonard Bird out there and he's the only one that patrols that area. So we are getting the Sheriff's Department to help him out with this resolution. We're talking about fencing properties, signage, enforcement. The shooting range is going to be talked about. I know they go out there and shoot on BLM property and that is causing a lot of problems like José mentioned and we're talking about maybe putting a shooting range together on BLM land.

With that, Mr. Chair, Commissioners, we will bring this forward at our next meeting. Thank you.

CHAIRMAN SULLIVAN: Okay. The shooting range that you're talking about is not an official one. It's an ad hoc one as it were.

COMMISSIONER ANAYA: Yes.

CHAIRMAN SULLIVAN: Commissioner Duran and then Commissioner Montoya.

COMMISSIONER DURAN: Just a quick question. Do we have another meeting this month?

CHAIRMAN SULLIVAN: The 16th. Ahead of the RPA.

COMMISSIONER DURAN: Okay. Thank you.

CHAIRMAN SULLIVAN: Commissioner Montoya.

COMMISSIONER MONTOYA: Mr. Chair, I was very intrigued looking at these photos and I kind of had déjà vu all over again, thinking, Is this the northern part of the county? And I would really like to see this probably expanded so it's maybe not just specific to La Cienega but maybe countywide. I really seriously have the same -- I could take the same pictures, bring the same thing. And I don't know if Commissioner Anaya would be willing to look that we do this countywide or maybe I could add specific areas to this. Because I really think this would go well with the issues that I've been faced with as well.

CHAIRMAN SULLIVAN: My reaction, Commissioner Montoya, is that it's a great idea. If we could get specific areas designated in your area as well that could have some community action and community input that could, number one, start clean-up, and number two assist with enforcement and calls into the Sheriff and some kind of a neighborhood watch group type of thing. That certainly would work in your area as well. Could we -- do you want to have a specific area that you would add to that?

COMMISSIONER MONTOYA: Yes.

CHAIRMAN SULLIVAN: Could you get with Commissioner Anaya and work on a resolution that would address that?

COMMISSIONER MONTOYA: Sure.

COMMISSIONER ANAYA: Mr. Chair, Commissioner Montoya, I had no intention of leaving anybody out. It's just that we'll start here and glad to welcome you aboard on it and we'll try to clean Santa Fe County up.

COMMISSIONER MONTOYA: Okay.

CHAIRMAN SULLIVAN: Okay. Sounds good. We'll see that resolution next week then. Anything else, Commissioner?

COMMISSIONER ANAYA: No.

CHAIRMAN SULLIVAN: I just had two quick items. One is that we, at our second to last Regional Planning Authority meeting where we discussed the water service agreement, the recommendations that came out of it were that as a part of negotiating that agreement we have -- the City would have two City Councilors that they would designate and the City Manager and a staff person and an attorney and the County would likewise have two for that. If it's okay with the Commission, I'd like to assign that to myself and to Commissioner Campos as designated representatives to start that or carry forward that

negotiation at this time. Anybody have any problems with that? Commissioner Duran?

COMMISSIONER DURAN: I don't, but I was wondering as part of that, did Gary Roybal every have the opportunity to present to the Public Works Department and the City Council the water service agreement that we presented to them?

MR. GONZALEZ: Mr. Chair, Commissioner Duran, it's my understanding that he has some time that has been made available. Wednesday there is a scheduled time for Gary Roybal to appear before the City Council and explain the agreement. So we've done that and we're still working on the Public Works Committee. Ten minutes? However, that's his presentation and obviously there will be questions from the Councilors as well.

CHAIRMAN SULLIVAN: What time is that, Gerald?

MR. GONZALEZ: The meeting starts at 4:00 I believe and I think that's scheduled for, it's just a few items down, about 4:30 or so.

COMMISSIONER DURAN: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner.

COMMISSIONER DURAN: Do you think we could ask Gerald to ask the City Manager and the City Council to give Mr. Roybal 15, 20 minutes to make the presentation? This is a big document. This is a big deal for the County and I think to limit it to ten minutes -- why even bother going?

CHAIRMAN SULLIVAN: Let's ask for more, Gerald. How's that?

MR. GONZALEZ: We'll make that request. I do understand that at least one of the Councilors has a list of questions that will allow him to elaborate on the explanation but I'll make the request anyway.

CHAIRMAN SULLIVAN: Are they also discussing the convention center at that meeting?

MR. GONZALEZ: That's correct.

CHAIRMAN SULLIVAN: That's what I thought. We'll have to live within their guidelines but if we have some questions from the Councilors I think we'll be able to get those issues out and I just wanted to get this committee set so we're not holding up any part of those negotiations. A lot has taken place already between the staffs and we're not starting from ground zero here. But it was the desire of the RPA that this issue should be moved on now to the County and City and it's been presented and discussed at the RPA and the RPA wants to move on with its task of doing the Extraterritorial Zone plan and I don't think wants to be the venue for this discussion anymore unless it's absolutely necessary. The Chair of the RPA is here. Is that your understanding, Commissioner?

COMMISSIONER DURAN: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Duran.

COMMISSIONER DURAN: I'm wondering if those representatives to the water service agreement discussions, both you and Commissioner Campos, would be representing the County based on the water service agreement that we adopted as a Commission. Is that correct?

CHAIRMAN SULLIVAN: That's what we would be empowered to negotiate.

And then I think what we would do is as changes are proposed, we would need to bring those back, either in regular session or under executive session.

COMMISSIONER DURAN: I think the two of you would be perfect for that.

COMMISSIONER MONTOYA: That's fine with me, Mr. Chair.

CHAIRMAN SULLIVAN: We'll make those appointments then. Any future chairman can make any appointments that he wishes. If we're not negotiating a good deal you can relieve us.

COMMISSIONER DURAN: I'm sure you'll do a good job.

CHAIRMAN SULLIVAN: The only other thing I had is, and I guess this is for Roman. I received a call about some meetings in the Community College District having to do with some planning. A meeting of stakeholders in the Community College District, and I wasn't able to answer the question and I assumed since I didn't know about it I wasn't a stakeholder. Could you tell me what a stakeholder is and what's going on?

MR. ABEYTA: Mr. Chair, the meetings you're referring to are with the fiscal impact contractor. Throughout the fiscal impact study, there were several groups or individuals identified, such as the developers who have master plans pending that have been involved in the fiscal impact process. So that's what they're referring to as stakeholders. There have been several meetings over the past two days, some with them, some with staff. There'll be another meeting tomorrow with senior staff and representatives from the Public Works Department to go over the findings of the study.

CHAIRMAN SULLIVAN: I guess my request would be that if we have these meetings that they not just include the developers, that they allow the public to attend and having them during the day is not really conducive to that. Is there any way to make these meetings more public? I guess that they're involving future plans for the Community College District and it might be appropriate to have the public involved in that.

MR. ABEYTA: Mr. Chair, I think that was the intent. Or the public meeting would probably be the study session we set up. But the stakeholder meetings didn't just include developers but there were members from the Community College District Review Committee who participated in that meeting also. It was just a group of individuals that were identified early on in the process that included developers but wasn't just developers.

CHAIRMAN SULLIVAN: Okay. Maybe we could get a list of that because I noticed in that fiscal impact study there was a chart that showed whose responsibility should be what and it said this was recommended by the stakeholders and I just wondered who was recommending that the County do all these things. So I think when we get to the point where we're talking about villages and future development of the Community College District, which we appear to be at now that we need to involve the public and provide these meetings at a time when the public can attend them.

Okay, those are the only two things I had.

IX. Committee Appointments/Reappointments/Resignations

A. Request Appointment of Dr. Susan Cave to the Corrections Advisory Committee

GREG PARRISH (Corrections Coordinator): Mr. Chair, Commissioners, before you you should have a letter or an e-mail of interest from Susan Cave. Dr. Susan Cave, she's indicated an interest in serving on the Correction Advisory Committee. Also attached is her vita which outlines her background and experience. She's going to, if approved by the Commission, fill the mental health opening currently in the Correction Advisory Committee. With that I'll stand for any questions you may have.

CHAIRMAN SULLIVAN: Okay. Is Dr. Cave here?

MR. PARRISH: No, she isn't.

CHAIRMAN SULLIVAN: Okay. Questions for Greg?

COMMISSIONER MONTOYA: Mr. Chair, move for approval of the appointment of Dr. Susan Cave.

COMMISSIONER ANAYA: Second.

CHAIRMAN SULLIVAN: Discussion? Resume certainly looks impressive and we're glad to have her help us out with the committee. And there's a meeting tomorrow, right? Not of the committee, but of something else.

MR. PARRISH: Tomorrow there's a meeting at 4:00 on the coordination and communications committee regarding jail activities, and then on Thursday there's a meeting of the Correction Advisory Committee.

CHAIRMAN SULLIVAN: Okay. Where are those meetings?

MR. PARRISH: The coordination and communication meeting, Mr. Chair, will be held here in the chambers. The meeting of the Correction Advisory Committee is in the Land Use conference room at 3:00 on Thursday.

CHAIRMAN SULLIVAN: Okay. Those meetings are open to the public.

MR. PARRISH: Yes they are.

CHAIRMAN SULLIVAN: All right. We have a motion and a second.

**The motion to appoint Dr. Susan Cave passed by unanimous [3-0] voice vote.
[Commissioner Duran was not present for this action.]**

X. Presentations

B. A presentation of a joint County of Santa Fe Youth Shelters and Family services best practices award for the newly constructed youth shelters

TONY FLORES (Project Manager): Mr. Chair, thank you. It's actually our

Santa Fe County Youth Shelters.

CHAIRMAN SULLIVAN: Oh, okay. There's no City in there.

MR. FLORES: There's no City in it.

CHAIRMAN SULLIVAN: Okay. I stand corrected.

MR. FLORES: Before I get started, Mr. Chair, I'd like to ask up Mr. Gary Friedman, who's the president of the Youth Shelters board of directors, Ms. Renee Borrego, who's the chair of the building committee for the Youth Shelters, Ms. Karen Von Yuna, who is the executive director of Youth Shelters and Family Services, and also Ms. Pearly Kunanin, who is the development director for Youth Shelters, if they could come up.

Mr. Chair, members of the Board, on October 28th staff attended an infrastructure finance conference in Albuquerque. It's a conference that is a collaborative effort of many, many state agencies and private entities to look at capital infrastructure and financing, how we as entities can accomplish our projects. One of the highlights of this conference is the presentation of best planning and practice awards for different projects that have used innovative financing methods, collaboration methods, etc. to develop capital improvements or facilities. I'm very pleased to say at this year's conference, Santa Fe County and the Youth Shelters organization received a best planning and practice award for our innovative financing for the new youth shelter which opened in October essentially. And at this time I would like to present the award to the Youth Shelters and Family Services Organization.

GARY FRIEDMAN: Mr. Chair, Commissioners, my name is Gary Friedman. It's my honor to be the president of the board of directors of Youth Shelters and Family Services. On behalf of the board of directors and those people who are here with me today, the staff, and all the youth in Santa Fe at risk who are serviced by our organization, I wanted to say thank you so very much for this award. And thank the Commission for years of support for our Youth Shelter and Family Services. It's an organization that really serves the public need and has been tremendously supported by the Commission in the past. We just want to say we really, really appreciate it and it really helps us do our job. The grand opening of our shelter facility was a community-wide event that was well attended and it was a pleasure to be a part of. So we thank you for the award presentation and thank you for all your support in the past.

CHAIRMAN SULLIVAN: Thank you for your hard work. I know that Commissioner Duran and some of the other Commissioners were there at the ribbon cutting and perhaps Commissioner Duran, you wanted to add something.

COMMISSIONER DURAN: I was just going to say I'm glad that you guys have that facility. The first day, I was invited to the one on Airport Road, it was obvious that we needed to do something for the kids and I'm glad that you all worked so hard to achieve that because that facility is beautiful. They couldn't have done it without all of you.

MR. FRIEDMAN: Thank you. It was a collaboration of so many people and we appreciate it very much. Thank you, Commissioner Duran.

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner.

COMMISSIONER ANAYA: I wanted to thank you all very much for your hard

work. You deserve this award. But there's two people that I want to thank that aren't here today and that is Commissioner Marcos Trujillo and Commissioner Javier Gonzales who made that possible also. We just kind of got in here, me and Commissioner Montoya and we're getting all the credit but we need to thank those guys because they did a lot.

CHAIRMAN SULLIVAN: No, we weren't giving you any credit.

COMMISSIONER ANAYA: No? Okay.

CHAIRMAN SULLIVAN: We were giving the staff and volunteers and the --

COMMISSIONER ANAYA: But thank you very much and keep up the good work.

MR. FRIEDMAN: I wanted a special thanks to Tony and to Corky Ojinaga and to Rudy Garcia and the other staff at the County who have been instrumental in making this a reality. We couldn't have done it without such support. Thank you.

CHAIRMAN SULLIVAN: Thank you again. Keep up the good work.

XI. Consent Calendar

- A. CDRC CASE # A 03-5720. Monte Alto Homes & Land Inc. Appeal (Denied)**
- B. CDRC CASE # A/V 03-5700. Manuel Duran Appeal Variance (Approved)**
- C. Request Authorization to Enter into a Sole Source Price Agreement # 24-0080-FD for Structural Firefighting Apparel for the Santa Fe County Fire Department (Fire Department)**
- D. Request Authorization to Accept and Award a Price Agreement to the Lowest Responsive Bidder for RFP # 23-60 for a Quint Telescopic Apparatus for the Santa Fe County Fire Department (Fire Department)**
- E. Request Ratification and Approval of Amendment #3 to the Professional Services Agreement # 22-0028-FI-A with Basham & Basham, PC for Legal Services (Legal Department)**
- F. Resolution No. 2003-172. A Resolution Requesting Funding through the 2003/2004 New Mexico Department of Transportation's Local Government Road Fund Program (Public Works Department)**
- G. Request for Approval and Execution of the Grant Agreement for the Rufina Street to Agua Fria Road Sewer Line Extension, SAP Project 03-0349-STB from the New Mexico Environmental Department (Utilities Department) TABLED**
- H. Request for Approval and Execution of the Grant Agreement for the Santa Fe County Wastewater System Improvements, SAP Project 03-0352-STB from the New Mexico Environmental Department (Utilities Department) TABLED**
- I. Request for Approval and Execution of the Grant Agreement for the**

**Santa Fe County Water System Improvements and Easements, SAP
Project 03-0394-STB from the New Mexico Environmental Department
(Utilities Department) TABLED**

CHAIRMAN SULLIVAN: We have two items that are added to the Consent Calendar which weren't there. Those were approved in the agenda approval so that now under the Consent Calendar, and I assume no one wants to discuss them. Do we have a motion?

COMMISSIONER ANAYA: Move for approval.

CHAIRMAN SULLIVAN: Okay, there's a motion for approval of the Consent Calendar, and is there a second? I'll second that motion. Is there any discussion?

The motion to approve the Consent Calendar passed by unanimous [3-0] voice vote. [Commissioner Duran was not present for this action.]

XII. Staff and Elected Officials Items

A. Administrative Services

1. Request Approval of Collective Bargaining Agreement Between AFSCME and Santa Fe County

HELEN QUINTANA (Human Resources Director): Good afternoon, Mr. Chair, members of the Commission. Negotiations between Santa Fe County and AFSCME have led to the completion of an agreement that was ratified by union membership on December 8th by a unanimous vote. The agreement included changes to our disciplinary process, the creation of a labor management committee, some minor changes to the processes that we use for filling of vacancies, and a clarification of our classification and compensation plan. One other major change involves the term of the agreement that extends the contract for three years and allows the reopening of Article XXXI which is the classification and comp plan, Article XXXIV, benefits, and one non-financial article annually during the term of the agreement. I stand for any questions that you might have.

CHAIRMAN SULLIVAN: Helen, one question I had was that the funds that were finally negotiated here fit within the budget as the Commission had put together for these services. Is that correct?

MS. QUINTANA: Yes, Mr. Chair. The wages for January, that will be in effect January 2004 include 1.5 percent cost of living adjustment for union employees, and a \$175 lump sum salary incentive that will be distributed now in December.

CHAIRMAN SULLIVAN: Other questions of Ms. Quintana?

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Montoya.

COMMISSIONER MONTOYA: Helen, which were the articles that were amended?

MS. QUINTANA: Mr. Chair, Commissioner Montoya, every article was actually opened for negotiations. We actually worked on every single article.

COMMISSIONER MONTOYA: So every single one was amended.

MS. QUINTANA: Every single article was amended. Some of them were just clarified. Many articles referred to our HR rules and regs for the County and rather than having them refer to a specific rule we actually spelled out that rule and wrote it out. So every article was worked on.

CHAIRMAN SULLIVAN: The three you were mentioning, Helen, were the three that the union can bring back annually for renegotiation. Not anything else. And those three would be salaries.

MS. QUINTANA: Article XXXI which is salaries, Article XXXIV, benefits, and then a non-financial item of their choosing. One non-financial item.

CHAIRMAN SULLIVAN: I see. So those are the three she was referring to.

COMMISSIONER MONTOYA: Okay.

CHAIRMAN SULLIVAN: Other questions?

COMMISSIONER MONTOYA: Mr. Chair, the copy that I received last evening is the copy that was agreed upon?

MS. QUINTANA: That's correct, Mr. Chair and Commissioner Montoya.

COMMISSIONER MONTOYA: It's up to date.

MS. QUINTANA: It's up to date. I would like to clarify that the term of the agreement is July 1, 2003 that extends to June 30 of 2006. The agreement is retroactive but it doesn't have any impact in terms of salaries or any other. It was just a pre-, tentative agreement that was already signed off on by the union and by management.

COMMISSIONER MONTOYA: Mr. Chair, I'll move for approval of the collective bargaining agreement.

CHAIRMAN SULLIVAN: Okay, motion.

COMMISSIONER ANAYA: Second.

CHAIRMAN SULLIVAN: Second by Commissioner Anaya, moved by Commissioner Montoya. Discussion?

The motion to approve the collective bargaining agreement passed by unanimous [4-0] voice vote.

COMMISSIONER MONTOYA: Good job, Helen. Thanks.

XII. A. 2. Request Approval of Santa Fe County Classification and Pay Plan Effective January 11, 2004

MS. QUINTANA: Mr. Chair, members of the Commission, the classification and compensation plan for 2004 is being presented to you for your approval. Range maximums

have been increased to accommodate the cost of living adjustments. The wages for non-union employees have increased by the following amounts: employees earning less than \$40,000 annually will receive a 1.5 percent cost of living adjustment; employees earning more than \$40,000 annually will receive a 1 percent cost of living adjustment; department directors will receive one-half percent cost of living adjustment.

The increases will be effective the first full pay period in January. Staff recommends approval of the classification and compensation plan and I stand for questions.

CHAIRMAN SULLIVAN: And Helen, we would like I think as a Commission to also extend the lump sum incentive to those employees as well. Is that budgeted in our budget?

MS. QUINTANA: Mr. Chair, yes it has been budgeted.

CHAIRMAN SULLIVAN: Which would be a one-time lump sum salary incentive of \$175 minus applicable taxes.

MS. QUINTANA: That's correct.

CHAIRMAN SULLIVAN: Okay. Questions on the County classification and pay plan?

COMMISSIONER ANAYA: Move for approval.

COMMISSIONER DURAN: Second.

CHAIRMAN SULLIVAN: Okay. Would that include the one-time lump sum salary incentive?

COMMISSIONER ANAYA: Yes, Mr. Chair.

CHAIRMAN SULLIVAN: Okay.

MS. QUINTANA: Mr. Chair, a point for clarification. You would also like that distributed in December?

CHAIRMAN SULLIVAN: In December 2003. We have a motion from Commissioner Anaya and a second from Commissioner Duran? Any further discussion? Anything, Commissioner Montoya?

COMMISSIONER MONTOYA: No.

The motion to approve the classification and pay plan passed by unanimous [4-0] voice vote.

CHAIRMAN SULLIVAN: Thank you, Helen, for working deliberately on that. We again appreciate the effort of all the employees of Santa Fe County.

XII. C. Utilities Department

1. Consideration of Contract Amendment for Extension of Time to Submit Final Plat for Development by John J. McCarthy on State Land Office Property in the Community College District

DOUG SAYRE (Water Director): Mr. Chair, Commissioners, before you is a contract amendment to the existing service contract that John J. McCarthy has with the Utility Department for 22 acre-feet of water. In that agreement there's a provision that he has to submit a final plat by December 28, 2003. Because he's been involved in a rather lengthy process with the State Land Office and also with some of the considerations of the Community College District, he is requesting a two-year extension of that time schedule for submitting a final plat. We basically reviewed that and concur and therefore we're requesting that he be granted a two-year time extension to December 28, 2005 to submit a final plat for the state land that is under consideration for development.

CHAIRMAN SULLIVAN: Okay, questions for Doug? Doug, would this include or anticipate that any ordinance changes that have been made between now and two years from now would be incorporated? I guess the only concern I have with any extensions is that if they continue on, the applicant gets grandfathered and changes that come about and ordinances, we get into arguments as to whether they're applicable to them. So usually when we come in for like master plan extensions and so forth we had a proviso that they are subject to new ordinances that the Commission enacts during that extension period. Is that anticipated here?

MR. SAYRE: Mr. Chair, my recollection of the contract, that it says that he has to abide by any requirements that come forth regarding development and I think that's within the existing contract.

CHAIRMAN SULLIVAN: The contract being?

MR. SAYRE: The water service contract he presently has.

CHAIRMAN SULLIVAN: The water service contract.

MR. SAYRE: Yes. I think we didn't change any of that wording in there, so in my recollection he still has to abide by anything that has happened or that subsequently would happen.

CHAIRMAN SULLIVAN: During that extension period. Right. So with that understanding them, this extension request is brought forward.

MR. SAYRE: Mr. McCarthy is in the audience. We could ask him if that's his view of this.

CHAIRMAN SULLIVAN: If you disagree, Mr. McCarthy raise your hand. I don't see him disagreeing but he's standing up. That may mean something else.

JOHN MCCARTHY: I'd be happy to answer any questions you may have.

CHAIRMAN SULLIVAN: I think it was just the issue, I think what Doug was saying is that you would be subject to any future amendments to the ordinances that might come forward and be applicable to any land use development.

MR. MCCARTHY: I believe that's the case for any master plan, that it's subject to the pleasure of the Commission.

CHAIRMAN SULLIVAN: That clarifies that. He's indicated that that's not a problem. Other questions for Doug on this extension request? Do you feel as staff that the two years is appropriate?

MR. SAYRE: I do at this time, Mr. Chair, due to the fact that my understanding is that State Land has a proposal in front of them that they're considering, they're evaluating for water. It's been a long process with them, but I see it. In checking with them I see that it's supposed to happen by the end of the month as far as going forward with a developer. So I see the process starting to really take place that he can really look at how he can address development on this parcel of land.

CHAIRMAN SULLIVAN: So I think that answer was yes, right?

MR. SAYRE: Yes.

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Anaya.

COMMISSIONER ANAYA: Move for approval of a two-year extension.

COMMISSIONER MONTOYA: Second.

CHAIRMAN SULLIVAN: Motion by Commissioner Anaya, seconded by Commissioner Montoya. Further discussion?

The motion to grant a two-year extension to John McCarthy passed by unanimous [4-0] voice vote.

CHAIRMAN SULLIVAN: Next is Matters from the County Attorney. That's executive session. Why don't we hear any Matters from the County Manager here at this point because that's the only thing left before public hearings that we'll do after the executive session.

XII. D. Matters from the County Manager

MR. GONZALEZ: Mr. Chair, I guess the only matter that I had was just to see in terms of timing for the presentation that we had earlier discussed regarding the Community College District fiscal impact study, whether there was a preference to try and set something up later on this month or to move it into January. And what I think I'm hearing is January but I wanted to double check.

CHAIRMAN SULLIVAN: How about January before -- again that sequence before the RPA meeting, which is the off meeting. We meet the second and last Tuesday and the RPA has been meeting the third and sometimes the first. They wouldn't meet the first this time because of the New Years. But that would be the third Tuesday in the afternoon. What day is that?

MR. GONZALEZ: The fifteenth. I think that's correct.

CHAIRMAN SULLIVAN: The fifteenth? Does that work for folks?
Commissioner Montoya, are they still going to start the RPA at 4:30? That's still the plan?
Okay.

MR. GONZALEZ: The third Tuesday in January would be the 20th, actually.

COMMISSIONER MONTOYA: Tuesday or Thursday?

MR. GONZALEZ: Thursday.

CHAIRMAN SULLIVAN: We do have it on the 20th? Okay, how about the
20th? At 1:00? Or 2:00? 2:00 may be pushing it.

MR. GONZALEZ: Right.

CHAIRMAN SULLIVAN: I would say 1:00. So we have enough time for the
presentation and enough time for detailed questions and feedback.

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Montoya.

COMMISSIONER MONTOYA: That's also the -- and I don't know who's
attending but the New Mexico Association of Counties mid-winter conference.

CHAIRMAN SULLIVAN: Where?

COMMISSIONER MONTOYA: I believe it's usually at the El Dorado. I think
that's where it was last year.

CHAIRMAN SULLIVAN: Because that's a several day thing, right?

COMMISSIONER MONTOYA: Yes. It starts on the 20th.

COMMISSIONER ANAYA: How about the 19th?

COMMISSIONER MONTOYA: The 19th, there's a board of directors meeting.

CHAIRMAN SULLIVAN: Is there going to be an RPA before the 20th?

COMMISSIONER MONTOYA: The 6th.

CHAIRMAN SULLIVAN: There's going to be one on the 6th? Do you want to
try the 6th?

MR. GONZALEZ: The 6th I think would work, Mr. Chair.

CHAIRMAN SULLIVAN: Then to avoid that conflict let's think about the 6th.
There is an RPA on the 6th?

COMMISSIONER MONTOYA: Yes.

CHAIRMAN SULLIVAN: At one o'clock. Anything else, Gerald?

MR. GONZALEZ: That's all I had at this time, Mr. Chair.

CHAIRMAN SULLIVAN: Okay, I guess what we want to do now, it's a little
after 4:30 is adjourn to executive session and then come back and start our public hearings. Do
we have a time estimate on the executive session?

STEVE ROSS (County Attorney): It can be very short, Mr. Chair. All we need
to talk about are limited personnel issues and pending or threatened litigation. It can be very
short.

CHAIRMAN SULLIVAN: Okay. I do think we've got some sandwiches
coming or something as well. So we'll do the executive session and then we'll take a quick
dinner break and then we'll be back. So I guess in terms of estimating, we'll be back probably

about 5:30, would be my guess. Is that right Laura. Maybe a quarter of six, Laura says. 5:30 to 5:45. We'll see how fast we eat.

XII. D. Matters from the County Attorney

1. Executive session

- a. Discussion of pending or threatened litigation**
- b. Discussion of limited personnel matters**

Commissioner Anaya moved to go into executive session pursuant to NMSA Section 10-15-1 (2 and 7) to discuss the matters delineated above. Commissioner Duran seconded the motion which passed upon unanimous roll call vote with Commissioners Anaya, Duran, Montoya and Sullivan all voting in the affirmative.

[The Commission met in executive session from 4:35 to 5:45.]

Commissioner Duran moved to come out of executive session having discussed only the matters outlined in the agenda, and Commissioner Anaya seconded. The motion passed by unanimous voice vote.

[The Commission reconvened at 5:45.]

XIII. Public Hearings

A. Land Use Department Items

- 1. CDRC CASE # A/V 03-5741 – Samuel Ortiz Variance. Samuel Ortiz, Applicant, is Appealing the County Development Review Committee's Decision to Uphold the Land Use Administrator's Decision to Deny the Placement of a Third Home on 2.01 Acres, Which Would Result in a Variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code. The Property is Located on 1 Paseo de Antonio in the Traditional Community of Cuyamungue within Section 20, Township 19 North, Range 9 East (Commission District 1)**

WAYNE DALTON (Review Specialist): Samuel Ortiz, applicant, is appealing the County Development Review Committee's decision to uphold the Land Use Administrator's decision to deny the placement of a third home on 2.01 acres which would result in a variance of Article III, Section 10 of the Land Development Code. The property is located at 1 Paseo de Antonio within the traditional community of Cuyamungue, Section 20, Township 19 North, Range 9 East, Commission District 1.

On September 25, 2003 the CDRC met and acted on this case. The decision of the

CDRC was to uphold the Land Use Administrator's decision to deny the placement of a third home on 2.01 acres. The applicant is requesting a variance of the lot size density requirements of the Land Development Code in order to allow a third home on 2.01 acres. There are currently two permanent homes and two septic systems on the property. The property is served by an onsite well which serves both homes. The applicant is requesting the placement of a third permanent dwelling on his property for this son.

The applicant states that he is one hundred percent disabled and would like his son to live on the property in order for his son to be close to his family and to care for him. The applicant also states that he would like his son and his three children to have an affordable place to live. Due to the high cost of living in Santa Fe the applicant's son is not able to afford his own property and support three children.

The two existing homes on the property are used as rental units and are a source of income for the applicant. The applicant also states the property is located in the traditional community of Cuyamungue where the minimum lot size per dwelling is .75 acres. The applicant states that the property is 2.01 acres and is only short .25 acres of being able to add a third home on the property.

Recommendation: Staff recommends denial of the appeal based on Article III, Section 10 of the Land Development Code which states the minimum lot size in this area is .75 acres per dwelling unit. Staff also recommends that the request for a variance be denied. Thank you.

CHAIRMAN SULLIVAN: Thank you, Wayne. Questions for staff?

Commissioner Duran.

COMMISSIONER DURAN: Wayne, there are two units right now and both of those units are rental units?

MR. DALTON: Mr. Chair, Commissioner Duran, that is correct.

COMMISSIONER DURAN: So the owner does not live on the property?

MR. DALTON: The owner does not live on the property. He lives on an adjacent piece of property. So he owns two pieces of property in that area. He lives adjacent to this piece of property.

COMMISSIONER DURAN: How much land does he have on the adjoining piece?

MR. DALTON: I believe a half acre.

COMMISSIONER DURAN: Okay. Thank you.

CHAIRMAN SULLIVAN: Other questions for staff? Okay, is the applicant here? Step forward please. Let the clerk swear you in please.

[Duly sworn, Samuel Ortiz testified as follows:]

SAMUEL ORTIZ: Samuel K. Ortiz.

CHAIRMAN SULLIVAN: Mr. Ortiz, if you would care to make any comments about the application feel free to do so.

MR. ORTIZ: Yes, what I'd like to state is because of my disability, I do need my son to help me. I did mention that those units were rentals. My wife and I made a purchase some years ago to be able to have other income. We're right now we're set on a mortgage so

it's real difficult to family transfer property to my son. I couldn't do that. Our mortgage is going to be there for quite a while. I do need him to help me oversee the property and take care of the units I have and I do need a place for him to live. He's finding a difficult time buying property in the area. It's too expensive. I do have a new well on that property that I put in in 1997 I believe it was. So that's the well that will feed the new unit.

I feel that there's plenty of room for it and even though I'm short a quarter of an acre, I think it would support it. I would ask for your recommendation in helping me achieve this.

CHAIRMAN SULLIVAN: Okay. Mr. Ortiz, this request is for a permanent home?

MR. ORTIZ: Yes, it is.

CHAIRMAN SULLIVAN: Questions for the applicant?

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Ortiz, the septic systems that you have on there now, are those permitted septic systems? You have two septic systems in there now?

MR. ORTIZ: Yes, what I have are two septic tanks that are attached to the same leach line of 200 feet of leach.

CHAIRMAN SULLIVAN: Okay.

MR. ORTIZ: They're designed properly so they hold as much as they can. They're on the upward portion of the property, the upper three-quarter part of property, so in essence the remaining 1.25 acre is where this other unit will be. I don't see that it would have any problem with permeation with leach or anything. But I'll go by whatever the Environment Department --

COMMISSIONER ANAYA: Thank you. Thank you, Mr. Chair.

CHAIRMAN SULLIVAN: Any other questions? If not, is there anyone in the audience who would like to speak. This is a public hearing. Either in favor of or in opposition to this variance request or this appeal of the denial of a variance. I don't see anyone coming forward. Okay, we're back to the Commission. What are the wishes of the Commission with regard to case A/V 03-5740?

COMMISSIONER MONTOYA: Mr. Chair, I'd like to make a motion that we reverse the decision from the CDRC and grant the applicant his request on the appeal and on the variance.

CHAIRMAN SULLIVAN: Okay, there's a motion.

COMMISSIONER ANAYA: I'll second that, and Mr. Chair, Commissioner, would that be with the conditions?

COMMISSIONER MONTOYA: Mr. Chair, that's actually a question that I had for the applicant now. In terms of Sam, have you seen the conditions which are Exhibit G? There are seven staff conditions.

MR. ORTIZ: Yes. I did. I read them and I am in complete agreement with all the recommendations.

COMMISSIONER MONTOYA: You are? Okay. Yes, Commissioner Anaya,

with staff conditions.

COMMISSIONER ANAYA: Mr. Chair, I've got a question to staff. Or actually, let me go back to the applicant. Is this going to be a permanent home?

MR. ORTIZ: Yes, it is.

COMMISSIONER ANAYA: Okay, staff, I noticed that you have condition number one. I don't agree with that unless you can explain it if it's going to be permanent.

MR. DALTON: Mr. Chair, Commissioner Anaya, condition number one is a standard condition that we place on all second home variance requests. This does not apply in this case because it's a permanent dwelling unit so condition number one would not apply in this case.

COMMISSIONER ANAYA: So, Mr. Chair, Commissioner, I'd like to remove condition number one.

COMMISSIONER MONTOYA: Yes. I agree.

COMMISSIONER ANAYA: And I'll second it.

CHAIRMAN SULLIVAN: Okay, moved and seconded. Discussion?

COMMISSIONER DURAN: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Duran.

COMMISSIONER DURAN: Mr. Ortiz, so your plan would be to build this third dwelling unit and maintain the two rental units that you have right now?

MR. ORTIZ: Yes, I do.

COMMISSIONER DURAN: And why won't you ask one of those tenants to leave and let your son move into that one.

MR. ORTIZ: Well, because they're not big enough. One is too big and one is too small.

COMMISSIONER DURAN: Why don't you add on to the one that's too small?

MR. ORTIZ: Add rooms and stuff like that? I hadn't considered adding on to it. It just -- well, part of that reason is that my son would need equity build up so he could take a little relief on his taxes as well. To have a little relief on your taxes you have to be able to own your home so you'll be able to deduct some expenses.

COMMISSIONER DURAN: Oh, okay.

MR. ORTIZ: The interest and so forth. Without it, he would be able to except for daycare.

COMMISSIONER DURAN: And you discussed this with your neighbors?

MR. ORTIZ: Yes, yes.

COMMISSIONER DURAN: And they didn't have a problem with it?

MR. ORTIZ: No one had any problems. I've done the standard mailing of the request from the County and I've had no one say anything except that they're happy to see my son is coming in.

COMMISSIONER DURAN: And the lot you own is half an acre, so you couldn't -- your property is half an acre?

MR. ORTIZ: Yes. My half acre on my property was given to me by my dad

back in 1970 when I got out of the military and I came back from Vietnam. He gave me a piece of land to build on and that's where we built. That's where I raised by kids, my boys. I have two boys. One's in Iraq and my oldest son is here. They were raised on that half acre. At that time it was only half acre required for a dwelling.

COMMISSIONER DURAN: Just for staff, Wayne. So the property, the lot split or the proposal here was duly posted and their neighbors were notified and you didn't receive any letters opposing it?

MR. DALTON: Mr. Chair, Commissioner Duran, that is correct. It was properly posted in the newspaper, posted on the property, and I have not received any opposition from the neighbors.

COMMISSIONER DURAN: Okay. Thank you.

CHAIRMAN SULLIVAN: Wayne, I had a question. I guess my concern would revolve around the septic system. With three septic units or two septic tanks and another one to be added here, is there a minimum distance or what are the environmental issues that we're dealing with here?

MR. DALTON: Mr. Chair, the Environmental Department does require three-quarters of an acre to put a septic tank on the property. All septic do have to be within, further than at least 100 feet away from the well. The applicant has not yet submitted any information on the septic systems but that is a condition of approval and that's condition number three saying he does have to submit an Environment Department liquid waste permit.

CHAIRMAN SULLIVAN: Are the septic tanks that are there now, are they considered one septic system or two?

MR. DALTON: I believe there are two septic systems with one leach field.

CHAIRMAN SULLIVAN: And there's also a well on the site.

MR. DALTON: That's correct.

CHAIRMAN SULLIVAN: And the requirement is that there be a new septic system for this residence. Is that right?

MR. DALTON: That's correct.

CHAIRMAN SULLIVAN: And in looking at the map, I'm not understanding how that will actually even fit. It's a long, think site. The well is right in the middle of the site. Is that right, Mr. Ortiz? No? Okay, there's a W that looks pretty much in the center of the site. Does that not mean "well"? So are you going to drill a new well for this house? So the W is the new well. And is that one you've already drilled? Have you already drilled that well? So you've drilled that well. And you have another well at the corner of the property? Up by the road? Okay. And do you still use that well? That's for the two units. So you have one well at the corner and you have another one in the middle of the property. And so you drilled that well for this new house? Still is.

MR. ORTIZ: They said get your permit so I went to the State Engineer's Office and I requested a permit for another well. They issued me a permit and I had a well drilled. The only stipulation on that was that it had to be a metered well. It doesn't have power so I can't meter it yet, but the well exists. It hasn't been powered. It's not in use. It just exists.

COMMISSIONER DURAN: How far did you go down?

MR. ORTIZ: I went to 100 feet. Just the well driller automatically does the 100 feet in that area. He hits water between 70, even less than that but he says if you want the federal water you go deeper. We have very hard water out there.

CHAIRMAN SULLIVAN: So the two trailers that you have there now, the two mobile homes are pretty much fronting on County Road 89. Is that right? Pretty much fronting on the road near the front of the property?

MR. ORTIZ: Yes, in fact you have an Exhibit E.

CHAIRMAN SULLIVAN: Right. That's what I'm looking at.

MR. ORTIZ: If you look up Exhibit E at the left of the dwelling up at the top, at the left-hand side you'll see my name. That's where I live on that half acre.

CHAIRMAN SULLIVAN: Right. I see that. And then next to that are the two properties. Are the two mobile homes that you rent.

MR. ORTIZ: Up in the right-hand corner is the well. It's the old well, with 3-point whatever it is. Acre-feet, per annum. It's an old well. And then the new well is in the middle of the property, right about where we penciled in the proposed home.

CHAIRMAN SULLIVAN: And where will the road be to get to this home?

MR. ORTIZ: The road comes between the two properties that I own, where my name is, and it comes down on the left hand side between the two properties.

CHAIRMAN SULLIVAN: On the property of Antonio Ortiz?

MR. ORTIZ: Yes. And then it comes in right behind that corner of the dwelling up above. It enters and follows the fence at 22 feet of right-of-way there.

CHAIRMAN SULLIVAN: Okay. Thank you. Commissioner Duran.

COMMISSIONER DURAN: I'm just kind of worried about your well being 100 feet. This area has really been plagued with these shallow wells being contaminated with septic systems' discharge. And adding another family on that piece of property is of some concern to me, especially when there's so much brackish water and contaminated water that already exists out there. So I have a real problem with that. I think almost all your neighbors are probably at 100 feet with their wells.

MR. ORTIZ: It could be. They use the same well driller. The probably all -- my mother's is like at 70.

COMMISSIONER DURAN: I don't think that's adequate distance for these things to leach and not cause contamination to the septic systems, to the water table there. I don't understand why you just can't evict one of the tenants and let your son live there. Or evict one of the tenants and build a new building but then still maintain two residences on there. I think the CDRC probably denied your request for the main reason that this is really an income producing property for you and you're not willing to relinquish one of those dwelling units to provide housing for your family. I have a problem with that. Thank you.

CHAIRMAN SULLIVAN: Other questions for the applicant? Commissioner Montoya.

COMMISSIONER MONTOYA: Mr. Chair, if I could just respond to that. It is

an income producing -- a dependent income producing property for the applicant. I think it will create further hardship if he were to evict one of the tenants in terms of the financial situation that has been presented before us to evict them and it would be counterproductive, I think, in terms of what the applicant is looking for. I think that's one of the reasons that there would be some hesitancy to evict someone from one of the current residences that is a financially dependent source of revenue for the applicant in order to accommodate his son. He's looking at essentially expanding -- not expanding but proposing a new residence for his son while still being able to maintain his financial income which he is dependent on. That's all I have, Mr. Chair.

COMMISSIONER DURAN: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Duran.

COMMISSIONER DURAN: Maybe he could make those two units one big unit and get more money for it. That would lessen the financial impact. Thank you, Mr. Chair.

CHAIRMAN SULLIVAN: Okay. If there's no other comments or questions, we have a motion on the floor.

On the motion to approve CDRC Case #A/V 03-5741, there was a 2-2 tie with Commissioner Montoya and Commissioner Anaya voting in favor and Commissioner Sullivan and Commissioner Duran voting against.

CHAIRMAN SULLIVAN: Okay, the motion is tied 2-2. What that means, Mr. Ortiz, is that it will come up at the next land use meeting in January when we have the fifth member of the County Commission here and the matter will be brought up again, not for public hearing but for a vote, a revote when all of the members are present. So the staff will notify you when that will be and you can be present to answer any questions at that time.

MR. ORTIZ: Okay.

CHAIRMAN SULLIVAN: Thank you very much.

COMMISSIONER DURAN: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Duran.

COMMISSIONER DURAN: Mr. Ortiz, I'll also be available to discuss your application if you feel I need to further understand your dilemma. I'd be willing to meet with you.

**XIII. A. 2. EZ CASE # A 03-4851 – Miller Family Transfer Appeal.
Sandra Blakeslee and Carl Moore, Appellants, are Appealing the
EZC’s Decision to Approve the Neil Miller Family Transfer Land
Division (EZ CASE # DL 03-4850) to Divide 3.38 Acres into Two
Tracts. The Property is Located at the Intersection of Fin Del
Sendero and Camino Delilah, within Sections 8 & 9, Township
17 North, Range 9 East (Commission District 2)**

VICTORIA REYES (Review Specialist): On October 9, 2003, EZ Case #DL 03-4850, Neil Miller family transfer was presented before the EZC for a requested approval to allow 3.38 acres to be divided into two lots for the purpose of a family transfer. The EZC granted approval of this request. Sandra Blakeslee and Carl Moore, neighboring Camino Delilah homeowners are now appealing the decision of the EZC. The appellants believe the minimum lot size in this neighborhood should not go below 2.5 acres.

The subject property lies within the Basin Hydrologic Zone. The minimum lot size in this area is 2.5 acres or 1.25 acres for family transfers with quarter acre-foot per year water restrictions for each lot. Neil Miller has owned the property since 1995 and proposes to divide the lots as follows: Lot 1A-1: 2.08 acres more or less, with an existing residence to be retained by Neil and Susanne Miller; Lot 1A-2: 1.30 acres more or less, vacant to be transferred to adult son, Jeremiah Miller. The request made by Neil Miller is in conformance with Section 3.3.6.D of the Extraterritorial Subdivision Regulations and Section 5.C of the Extraterritorial Zoning Ordinance. Therefore, the decision of the EZC was to grant approval of the request for a family transfer, subject to the following conditions: Mr. Chair, may I enter the conditions into the record?

[The conditions are as follows:]

1. Onsite access roads must have a 38’ easement with a 20’ driving surface and must be developed meeting Santa Fe County Common Roadway Standard prior to recording the plat of survey or the applicant must provide Santa Fe County with certified engineer’s cost estimate to develop the access. A financial guarantee acceptable to the County in the amount of the approved cost estimate must be included.
2. The applicant must record water restrictive covenants simultaneously with the plat of survey imposing 0.25-acre feet per year per lot. Water meters must be installed to each lot at the time of development and meter readings must be submitted to the County Hydrologist annually by January 30th of each year.
3. Water supply to these lots are governed by the EZO Section 10.1A
 - a. Only one well shall be permitted to serve these lots. This well shall be subject to a shared well agreement, to be approved by the County and executed prior to plat recordation. The plat must indicate shared well easements.
 - b. Drilling of any new domestic well is prohibited if regional water is available

- within 200 feet of these lots.
- c. If regional water becomes available, domestic well use shall cease within 90 days and these lots shall connect to the regional water system.
 - d. All wells drilled on these lots post 1/1/00 must be constructed per EZO standards listed in Section 10.1.A.3. Proof of proper construction must be submitted at the time of development permit request or upon demand by the County Land Use Administrator.
4. A 10' wide utility easement along all property lines must be dedicated and shown on the plat for future potential water lines.
 5. As per ESR regulation require a solid waste fee be assessed for all newly created parcels. The fee for this subdivision is \$65.79
 6. Approval from the New Mexico Environment Department for the proposed liquid waste disposal system must be obtained at the time of building permit.
 7. Applicant must contact Rural Addressing for the assignment of addresses for the proposed lots.
 8. Compliance with County Fire Marshall review, as applicable.
 9. Submit family transfer affidavits and deeds or transferring lots to family members prior to plat recordation.
 10. A retention pond in accordance with the Santa Fe County Regulations will be required n Lot 1A-1 and at the time of development on Lot 1A-2.
 11. The applicant must address all minor redline comments by the County Subdivision Engineer as shown on the plat of survey and terrain management plan. These plans may be picked up from Victoria Reyes, Development Review Specialist with the Land Use Dept. These plans must be resubmitted with the Mylar prior to recordation.

MS. REYES: Recommendation: Sandra Blakeslee and Carl Moore have submitted a letter of appeal stating that they do not support the request made by Neil Miller to increase the density by creating lots more than 2.5 acres. The application submitted by Neil Miller is in accordance with the Extraterritorial Zoning Ordinance, Section 5.3 and with the Extraterritorial Subdivision Regulations, Section 3.3.6.d. Therefore, staff recommends that the BCC uphold the decision of the EZC and deny the appeal. Thank you.

CHAIRMAN SULLIVAN: Okay. Questions of staff? Commissioner Duran.

COMMISSIONER DURAN: Victoria, are you aware of any restrictive covenants placed on this property that would prevent it from being subdivided below 2.5 acres?

MS. REYES: Mr. Chair and Commissioner Duran, I believe, talking to the appellants, there are covenants. I haven't seen any but there may be some in place.

COMMISSIONER DURAN: Joe, do you know?

JOE CATANACH (Review Division Director): Mr. Chair, Commissioner Duran, I was not aware of any covenants and I guess Victoria has talked to the people that

are appealing. They indicated there were some covenants but they have not submitted them to us. As the procedure goes, the staff is enforcing the zoning and not the private covenants.

COMMISSIONER DURAN: Okay. Thank you.

CHAIRMAN SULLIVAN: Other questions for staff? Okay, let's hear from the appellant, please. Just have the Clerk swear you in please.

[Duly sworn, Sandra Blakeslee testified as follows:]

SANDRA BLAKESLEE: My name is Sandra Blakeslee. I live at 16 Camino Delilah. Our name is on the appeal mainly because when we first saw the sign go up we got together, the whole lots around the Millers' house and we agreed to send them a letter so that's why my name is on it. I'm really here on behalf of a lot of people. Some of them are not here tonight, but for just a moment I'd like to just ask everybody that's here in opposition to the Miller lot split to please stand up. [Approximately 20 individuals stood.] Thank you. This is just a small portion of people that are opposed to this lot split.

As far as we know, it's unanimous. We don't know of any neighbor step forward to tell us they were in favor of this. The primary reason, and probably people will give you lots of other reasons other than what I will say, but most of us moved there with the understanding that the minimum lot is 2.5 acres. Our covenants, across the street from the Millers do state 2.5 acres and it came as a big surprise to most of us that the family transfer would trump the zoning. If they are allowed to split their property we're very concerned that it's going to set a precedent in this whole region and other families will try to do the same. In fact, we could. We own five acres. We could split it up. We have adult children who are in their 30s. We could benefit from this.

But we really would like to keep the neighborhood with open space and not set this precedent. I think that's about all I have to say. I'd like to invite other neighbors to step forward and tell you personally why they are opposed to it.

CHAIRMAN SULLIVAN: We'll get to the public hearing in just a minute. If there's anything else you'd like to present or we'll have the Commission see if they want to ask you any questions as the appellant.

MS. BLAKESLEE: We do have some petitions from other subdivisions which we can give you. We do have the covenants for that area but I think some of the people here that are in it may talk about the covenants. We're also concerned about the well. The Millers are on a shared well with four families and in order to do this lot split he's going to have to put in another well. And he's saying very firmly that he doesn't think it will affect the existing wells and we're just not so sure of that. I just don't know how you can be so sure that putting another well on these three acres is not going to impact the existing well. I don't think a hydrologist could swear to that. I talked to Jack Frost about it. He's a friend of ours, and Jack said there's no way you could tell yes or no. But if it did harm the existing well, we certainly would like to have some remedy for that in advance. Although I'm not one of the next door neighbors. We live just up the end of the street. Questions?

CHAIRMAN SULLIVAN: Okay. Questions for the appellant?

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Montoya, then Commissioner

Duran.

COMMISSIONER MONTOYA: Ms. Blakeslee, regarding the location, this is in the La Tierra area?

MS. BLAKESLEE: Yes.

COMMISSIONER MONTOYA: Whereabouts exactly off of 599? I was trying to follow the map but --

MS. BLAKESLEE: Okay, if you take La Tierra --

COMMISSIONER MONTOYA: Take the exit on La Tierra?

MS. BLAKESLEE: Yes. La Tierra exit, and you go three quarters of a mile to the Wildflower stop sign. Do you know that corner? The next right turn is Fin del Sendero. It's one mile straight on that road. It's passed Mariposa.

COMMISSIONER MONTOYA: East?

COMMISSIONER DURAN: North.

MS. BLAKESLEE: North. Sort of toward Tano Road.

COMMISSIONER MONTOYA: Oh, okay. Okay.

MS. BLAKESLEE: And it's an area that's developing very rapidly. The homes are all on 2.5-acre sites. There's not a single house that I know of out there that's on a one-acre or 1.25 acres. This will set a precedent for the region, which is [inaudible] Sundance Estates, our area, La Tierra, a bunch of areas out there are all 2.5 acres and most people have moved there to be in that kind of open space and we'd hate to see it get denser, especially since we don't have any City services. We don't have City water like Mariposa. Fire is an issue. One house certainly wouldn't make a difference but this could open the gates to many more houses in a much denser area prematurely I think. Maybe you want to do this in ten years but I don't know about right now.

COMMISSIONER MONTOYA: Thank you.

CHAIRMAN SULLIVAN: Commissioner Duran.

COMMISSIONER DURAN: Ms. Blakeslee, did you buy this from the original developer?

MS. BLAKESLEE: We bought our property five years ago, from the Bobby Lee Trujillo's division. So we're across the street. We bought it from Tushara.

COMMISSIONER DURAN: And he bought it from -- was it part of the Trujillo division?

MS. BLAKESLEE: He bought it from Bobby Lee Trujillo.

COMMISSIONER DURAN: So do you know, are there restrictive covenants that prevent this from going down to less than 2.5?

MS. BLAKESLEE: Our covenants say the minimum lot size is 2.5 acres. And many other small -- this is just a ten-acre --

COMMISSIONER DURAN: I know the area well. I was surprised -- well,

not surprised, but I was almost certain that there were restrictive covenants that --

MS. BLAKESLEE: There are on our side of the street but apparently, we're not so sure on the opposite side of the street where the Millers are. I do have those covenants that were drawn up in 1998, end of 1998. But I don't think that it states a minimum lot size. And even so, apparently, the family transfer can over turn the zoning? This was a surprise to us because zoning, I assume is put in for a reason. There's density reasons, water reasons and we just had no idea that family transfer could supplant --

COMMISSIONER DURAN: I'm no attorney but I think restrictive covenants override the zoning.

MS. BLAKESLEE: That would be great. Because restrictive covenants in the entire neighborhood are all for 2.5 acres. They certainly are on our street. Or on our side of the street.

COMMISSIONER MONTOYA: We do have an attorney.

COMMISSIONER DURAN: Did I --

COMMISSIONER MONTOYA: Did he overstep his boundaries?

COMMISSIONER DURAN: Again?

CHAIRMAN SULLIVAN: He said he was no attorney. He's speaking as an individual.

COMMISSIONER DURAN: A non-qualified individual.

CHAIRMAN SULLIVAN: Did you want to ask Mr. Ross -- did you have any information on that particular point, Mr. Ross, you could help us with?

MR. ROSS: Mr. Chair, Commissioner Duran, Commissioner Montoya, I'm not sure it's accurate to say that the zoning would trump private covenants but those private covenants, I think would be enforceable irrespective of what you do. So they would be enforceable amongst the neighbors, if in fact they exist on the subject property that we're discussing. I'm not sure. You can override them at this point, but certainly they're enforceable amongst the neighbors and it sounds like the neighbors are inclined to do just that.

MS. BLAKESLEE: We would like the zoning to stay at 2.5 acres. I think everybody here would agree to that.

CHAIRMAN SULLIVAN: And also there are some -- the family transfer requires that certain conditions be met. There are eight or ten, eleven conditions that the applicant has to meet regarding hardship and things of that nature.

MS. BLAKESLEE: Right. I might add that this is a newly developed area and it isn't ancestral land. It's not a matter of people having lived there for 30 years. It's an area that's rapidly growing. Very large houses are going up. It's a high-end neighborhood in a way with houses on these 2.5-acre lots. So everybody kind of liked it that way. That's a fair thing to say. I don't want to sound selfish about it but it is nice. That's why we moved there.

CHAIRMAN SULLIVAN: I did -- let me just ask Victoria a question. In the EZ minutes, I didn't see the -- or anywhere in the packet, I didn't see the copy of the

eleven conditions and the applicant's response to those conditions. Have you seen that?

MS. REYES: Mr. Chair, there aren't -- are you talking about the variance criteria.

CHAIRMAN SULLIVAN: Yes.

COMMISSIONER DURAN: This isn't a variance.

MS. REYES: It's not a variance.

CHAIRMAN SULLIVAN: You don't have to meet those criteria?

MS. REYES: They're allowed to go down to 1.25 acres as long as they're transferring to -- it's all in compliance.

CHAIRMAN SULLIVAN: So they don't have to meet those 11 conditions then? And what's the time period they have to own the property?

MS. REYES: Five years.

CHAIRMAN SULLIVAN: But they do have to meet the criteria that it's transferred to a family member, correct?

MS. REYES: Mr. Chair, that is correct, which would be a family transfer affidavit. Recording the family transfer affidavit and transferring the deeds over.

CHAIRMAN SULLIVAN: And the statute defines what a family member is.

MS. REYES: Yes. And that is the adult son.

CHAIRMAN SULLIVAN: And then there's no -- correct me if I'm wrong, there's no requirement that could be transferred to the adult son and the adult son could sell it the next morning. Is that right?

MS. REYES: That's correct.

CHAIRMAN SULLIVAN: So there's no requirement that the transferee hold it for any period of time, although the transferor has to own it for five years.

MS. REYES: Yes. There's no holding period after it's been transferred.

CHAIRMAN SULLIVAN: Okay. And the holding period's been met for --

MS. REYES: Right. It's been met for five years. They could transfer and there's no holding period.

CHAIRMAN SULLIVAN: Okay. Cleared that up. Any other questions for the appellant? All right. This is a public hearing. Are there those in the audience who would like to testify in opposition to or in favor of the appeal? Why don't you give me a show of hands so I know how many we have. Okay. Thank you. I would like you to limit your comments to three minutes if you could please. And try not, if at all possible, to repeat what someone prior to you said. Try to offer some new information if you can on the appeal. Thank you. Step forward sir. When you come forward just state your name for us.

[Duly sworn, Willis Beach testified as follows:]

WILLIS BEACH: My name is Willis Beach and I share the well with the Miller family and some next door neighbors. I'm very concerned with this family transfer because I felt that I did in fact, along with many other people here, sign covenants that

limit the size, the minimum size of my lot at 2.5 acres. And I think it's a quarter acre-foot for water. Further, when I moved here, we selected this area because of the beauty of it, the privacy of the size of the lot, that we wouldn't be burdened as we were in California with every time we sneezed our neighbors would say God bless you.

So if this transfer is approved it appears to me that its going to set a bad precedent in the area and that many other people can do the family transfer on these lots, reduce them down and essentially turn the area into a subdivision with no City provisions for sewage, water, fire, or what have you. Now this appears to me to be a total dichotomy with what we're trying to do here in Santa Fe County. Now, I have no heartburn with family transfers. I have eight children and I sure would like to transfer some land to them but my covenants would not allow that because I can't further reduce from 2.5 acres to what Mr. Miller is trying to do. So there is a covenant problem here. Many of the neighbors have covenant problems if this transfer occurs.

So I'm fully in opposition to this sort of thing. And someone mentioned the family transfer trumping the zoning requirement. Well, it does look strange to me but I think initially when these family transfers were set up they were for large areas of land, farming and whatever, and I think it's a beautiful idea that you'd be able to transfer somebody's property to your relatives or to your family. But I don't think it was every intended to be reduced down to the point where the transfer would produce a lot that was less than the zoning requirements. There's something intrinsically difficult for me to believe.

So again, I think to preserve the community reasons behind why we moved here and why we love it so much here, that this transfer will definitely set a bad precedent and I am -- I'd like for you gentlemen and ladies to consider a no vote on this thing and not allow this family transfer to happen. Thank you very much.

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Anaya.

COMMISSIONER ANAYA: Sir, what was your name again?

MR. BEACH: Willis Beach.

CHAIRMAN SULLIVAN: Okay, who else would like to speak? If you'd like to come forward and sit on the front bench, when there's an opening there then we can move this a little bit quicker. Yes, ma'am.

[Previously sworn, Martha Marx testified as follows:]

MARTHA MARX: Yes, Mr. Chair. My name is Martha Marx. I live at 81 Bluestem Drive, which is not in this subdivision but it is on the adjoining subdivision right next door. I'm literally across the ridge. Anything that is done in this area affects us and our view lines and also our sense of community. I know that our subdivision, Colinas Verdes, and there are ten of us here tonight representing ten families, we are concerned about the change to the character of the community, because we have the same kind of covenants and the same kind of zoning. And I would like to ask you to think of the property rights of the existing homeowners who live there and bought our homes under what we thought was a covenant with the County, that this was the kind of community that

we were going to be living in. And we are very concerned, as the gentleman before said about precedent. We would like to see the 2.5-acre zoning maintained and I would ask you to please deny the rezoning or the family transfer and support the appeal. Thank you.

CHAIRMAN SULLIVAN: Okay. Thank you. Next speaker. While she's getting up, Steve, I have a question. In an instance where a lot is recorded and as a part of that recordation the County limits the water to a quarter acre-foot as a condition of the lot recordation. Then, under a family transfer, an individual wants to subdivide that down to 1.25. What happens to that quarter acre-foot requirement?

MR. ROSS: Well, if it's a recorded condition on the plat originally, and you split the property in two, you probably have to share that quarter acre-foot amongst both properties.

CHAIRMAN SULLIVAN: Okay. So it doesn't, ipso facto, give you a right to another quarter acre-foot, just because you meet the conditions of a family transfer?

MR. ROSS: It depends on how it's recorded.

CHAIRMAN SULLIVAN: Depending on what's written on the plat. But these are fairly recent recordations and my understanding is that the typical requirement is a quarter acre-foot. Mr. Catanach, did you have some thoughts on that?

MR. CATANACH: Yes, that's correct. Under the family transfer, the quarter acre is not split between the two lots. Each lot would obtain a quarter acre under the family transfer split.

CHAIRMAN SULLIVAN: Wait a minute. You're saying something different from Mr. Ross here.

MR. ROSS: That's correct.

CHAIRMAN SULLIVAN: So you're saying under a family transfer, and is this by state statute or how does that work? The new lot then automatically gets a quarter acre-foot.

MR. CATANACH: That's correct.

CHAIRMAN SULLIVAN: By statute? By ordinance?

MR. CATANACH: Well, that's been standard practice for one. And I believe that probably the subdivision regs and the applicable zoning ordinance would specify that under a family transfer a quarter acre is the minimum allocation of water per lot.

CHAIRMAN SULLIVAN: Mr. Ross --

MR. ROSS: We're really talking about two different things. I thought you were talking about a restriction on the property itself.

CHAIRMAN SULLIVAN: Well, I'm talking on the property once it goes to a family transfer. In other words, when it was recorded originally as a subdivision, each lot had a note on the recordation, I'm assuming, in this hypothetical case, that limited the water use to .25 acre-feet. Lot A, let's say. Now, the owner wants to divide it into Lot A-1 and A-2. That recordation and everyone who bought around that property, I assume will assume that each of those lots had a .25 acre-foot limitation. Now, under the family

transfer, if the family transfer was granted, then that conveys an additional quarter acre-foot to Lot A. Does that seem to be what we're saying.

MR. ROSS: By regulation, that's what Mr. Catanach is saying. My comments were simply if there's a restrictive covenant on a piece of property, and it's split, you're going to have to relieve somebody of that restriction to accommodate this regulatory --

CHAIRMAN SULLIVAN: Apart from the restrictive covenants, I was strictly addressing something that's platted. A note on a plat. A County condition on a plat which limits the lot to a quarter acre-foot. If a family transfer occurs, forget the restrictive covenants for the time being, a family transfer occurs, then do we create another quarter acre-foot entitlement for that new lot?

MR. ROSS: If we created the original plat and we approved the original plat, we can change that with a subsequent recording.

CHAIRMAN SULLIVAN: Even those who may have bought around it would have bought with that assumption.

MR. ROSS: It's a complicated situation. You have to look at what actually exists.

CHAIRMAN SULLIVAN: I think I hear what you're saying. If the lot is platted at a quarter acre-foot, what the Commission giveth the Commission can taketh away. But if it's a restrictive covenant then that's an issue between the owners, all of whom have the same restrictive covenant applied to them.

MR. ROSS: That's a fair generalization.

CHAIRMAN SULLIVAN: Okay.

COMMISSIONER DURAN: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Duran.

COMMISSIONER DURAN: Just to kind of clarify what you're saying, we don't impose restrictive covenants. We require water restrictive covenants to be recorded.

MR. ROSS: Right.

COMMISSIONER DURAN: When they go for a lot split.

MR. ROSS: Right.

COMMISSIONER DURAN: My understanding is the Code doesn't restrict the doubling of that water allocation through a family transfer. The family transfer actually allows them at this point in time.

CHAIRMAN SULLIVAN: That's what Mr. Catanach is saying. That's what I'm trying to get clear. Whether if we first said, in our judgement, each of these lots should only be using a quarter acre-foot, at least our hydrology now, we're saying this particular Lot A can use a half acre-foot. Sounds like what you're saying is correct, because as a County condition we can amend it and up the water usage to a half an acre-foot. Subject to restrictive covenants which are things that the developer puts together and records and provides to the owners, to the purchasers. Okay. Excuse me, ma'am. I was just trying to get that straight in my mind.

[Previously sworn, Liz Zeiler testified as follows:]

LIZ ZEILER: Mr. Chair, Commissioners, my name is Liz Zeiler. I live in the neighborhood at 13 Camino Hasta Manana. Perhaps I can clear this up a little bit for you here. I do have the covenants for the Millers' tract. The domestic water use is restricted to a quarter acre-foot per year on that lot. And it's required by the Santa Fe County Land Development Code. The other thing I'd like to say is that in signing these covenants they have restricted themselves to 3.3 acres and if you like, I could go ahead and read that covering three minutes of precious time so I won't go into that. I don't need to.

Also I'd like to say that this property was purchased in 1998. I believe that under the family transfer ordinance that the five-year requirement has not been met and this family transfer could not have occurred if indeed Mr. Miller had not purchased additional acreage pursuant to 1998. In 1998, in that he -- I would ask staff to go back and look at that again. Also I'd like to say that the spirit of the family transfer initially was meant for the preservation and cultural traditional heritage in keeping families on the land. Mr. Miller is not a native New Mexican and prior to requesting the family transfer, Mr. Miller has in fact bought and sold eight separate parcels in the La Tierra area. So I guess I would argue similar to the previous case in that he also now has an additional lot that's for sale and he could have his son build a house on that property.

So I really, being a planner professionally, when I first looked at this request when it went before the EZC one of my questions was why was this not a density increase as opposed to a family transfer? Or a variance?

CHAIRMAN SULLIVAN: Let me ask you a question, ma'am. I didn't quite understand. If he bought it in 1998 and he's now -- are you saying it wouldn't be five years?

MS. ZEILER: We're in December, I believe it was in the latter part of December the property was purchased. So he hasn't actually met the five-year qualification for one. And then second I think it says, in reading the family transfer ordinance that there's a condition and he could not have met that condition without adding property on to his original purchase.

CHAIRMAN SULLIVAN: And you're saying he added property later than 1998 to make the 3.38 acres.

MS. ZEILER: It was 1995, I believe.

CHAIRMAN SULLIVAN: This parcel was purchased in 1995.

MS. ZEILER: And then he had other properties he added on to.

CHAIRMAN SULLIVAN: This parcel is 3.38 acres. His parcel was five acres, right?

MS. ZEILER: 3.3.

CHAIRMAN SULLIVAN: 3.3.

MS. ZEILER: The covenants state that it's 3.38.

CHAIRMAN SULLIVAN: Right.

MS. ZEILER: But there were some transfers in there that [inaudible]

CHAIRMAN SULLIVAN: And he's dividing it into two lots. One is 2.08 acres

and one is 1.3 acres. That's the two lots. I'm still not getting your point why you think if he bought it in 1995 --

MS. ZEILER: I think that originally he wouldn't have had a lot that was big enough to do the family transfer. Then he acquired more land in 1998 and so then they were able to meet the family transfer provisions.

CHAIRMAN SULLIVAN: I see. So you're saying he's off by a month or half a month or so.

MS. ZEILER: And it wasn't the original lot.

CHAIRMAN SULLIVAN: Okay. Thank you. Commissioner Duran has a question for you, or a comment.

COMMISSIONER DURAN: Ms. Zeiler, you referenced some water restrictive covenants. Were you able to find any other restrictive covenants of record besides those?

MS. ZEILER: I have them here, Mr. Duran.

COMMISSIONER DURAN: Were you able to find anything other than the water restrictive covenants? Were there any deed restrictions?

MS. ZEILER: There's water restriction covenants. They also state that the covenants restrict the land to that parcel size.

COMMISSIONER DURAN: And that is in what document?

MS. ZEILER: On covenants. They also state that the covenants restrict the land to that parcel size.

COMMISSIONER DURAN: And that is in what document?

MS. ZEILER: It was filed with the deed.

COMMISSIONER DURAN: Could we see that? Thank you. I'll give it back to you later. Maybe we want to enter these into the -- yes, these are deed restrictions. They're deed restrictions with a water restrictive covenant on it.

CHAIRMAN SULLIVAN: What's the original designation of this lot, Victoria?
2-A? 2-D?

MS. REYES: It is 1-A.

CHAIRMAN SULLIVAN: And they're changing it to A-1 and A-2. So this is lot 1-A? Thank you. Next speaker please.

[Previously sworn, Dan Clint testified as follows:]

DAN CLINT: My name is Dan Clint and I'm the organizer, the former president of the Los Amigos Association. A lot of these questions I probably could answer because I entered into an agreement with Neil Miller, approximately 1998 to buy a one-half interest in his well in a two-well shared agreement which I subsequently passed on. In exchange for this I paid \$7,000 cash plus my associates gave him .8 acre in exchange for those two interests in one half of the well. So therefore, resulting from that agreement it feels that when the County -- we based that upon the County's, the documentation and the belief that this was going to restrict, based on the restriction of the quarter of an acre-foot per lot and since I passed that one it's actually the people that purchased that wrote a speech here and another property, another person that bought the property they believed that's what they were getting was a half

interest.

Now that a new well is potentially going to be created and additional water to be drawn off the 2.5 acre lot that Neil owned, that feels that it's extremely unfair to the initial agreement that I had actually entered into. And I don't think that that should be accomplished without some kind of a concession for me that the agreement has altered. So I can also answer questions though as to how that land was acquired and how that agreement was entered into. And my understanding is, as Joe Catanach expressed, that there is actually going to be another well that is drilled and an additional quarter acre allowed and I think that's also part of thing with that is as you hear, a lot of these other property owners out here also have children. They are electing not to do this and perhaps they don't have the finances or the wherewithal or the time to come in and pursue the family transfer and suddenly their water usage is less than Mr. Miller's on this and I don't think that is correct. I think that's indicating kind of an arbitrary and capricious quality to the restrictive use of the water and I'm a little concerned about that.

CHAIRMAN SULLIVAN: All right. Thank you, sir. Next.

[Previously sworn, Don Shoemaker testified as follows:]

DON SHOEMAKER: Mr. Chair, Commissioners, my name is Don Shoemaker. I represent the Las Colinas Verdes Homeowners Association and most everything that I can say has probably been said. I would like to confirm that you all have received a letter from us and if you don't have, I would be happy to give you a copy.

CHAIRMAN SULLIVAN: Be sure that the Clerk has a copy if you would and let us look at the letter from the homeowners association.

MR. SHOEMAKER: From Las Colinas Verdes Homeowners Association. We're sandwiched between Las Campanas and this particular subdivision. We are on covenants of 2.5 acres or more. Many of us own multiple lots so that we have more open space. I think the letter states what pretty much everyone else has said in the room and for time's sake I'll just stop at this point unless you have any questions of me.

CHAIRMAN SULLIVAN: Okay. Any questions? If not, thank you, sir.

[Duly sworn, Bob Finley testified as follows:]

BOB FINLEY: My name is Bob Finley and my wife and I own the property adjacent to Neil's. And obviously the same concerns of water, I want to go over that again, since we're on a shared well with him I have even more of a concern that possibly most of the other neighbors. I'm not sure where this other well he's going to be drilling is going to go in and where it's going to start tapping into our supply. A second thing that I want to talk about and with all respect to Mr. Miller, if you look at page 3 of his response, I don't know if you have that or not, at the paragraph at the top, where he says that he met with my wife and myself and we were happy to learn -- we were not happy about anything, Neil.

I wasn't happy and I'm not happy today. The home that he's proposing to build is going to be right adjacent to his right-of-way, unless he's changed his plans. If you look at the map there, the house will be almost on the very corner, very close to the corner of Fin del Sendero and Camino Delilah and right, 20 feet off of Camino Delilah. So every time

we drive into the property where all the other homes are a good 50, 60, 70 yards off of the road, we're going to have this house sitting there. That's a very big concern to myself also.

When we bought the property from, not from Mr. Miller, as he states there, but from the Cohens, we were told at that time, when we moved from southern California to the beautiful city of Santa Fe we were told that this was a 2.5-acre parcel and would always be a 2.5-acre parcel. My wife, and she will get up and confirm this, when she moved over here prior to my getting here, since I had to stay in southern California. She met and talked and walked the property with Mr. Miller and Mr. Miller at that particular point in time said how wonderful it was to have 2.5-acre lots here. We could all enjoy this wonderful land. He seems to have changed his mind.

I have a letter here from the people I purchased the house from, we purchased the house from, the Cohens, who state that Mr. Miller had told them that he bought the property, the property he owns know, and was planning to build a wonderful home there and move. So Mr. Miller, it appears, if this is true and it's certainly a supposition, but I guess we could talk to the Cohens, that he plans not only to be moving away from the property he's subdividing but I have my doubts on what's going to happen to the second piece of property. So believe me, I'm incensed. I feel betrayed. I'm not happy and I hope that you will look at this in the overall aspect that I think it's being set up to be. Thank you.

CHAIRMAN SULLIVAN: Thank you, Mr. Finley. Next speaker, please.

FERN FINLEY: My name is Fern Finley, and I'm the other half of Mr. Finley. And I don't want to repeat everything he said but I can just tell you for me it's a very emotional thing. We had two very valuable pieces of property in California that we sold to come over here to enjoy a home with views and not people that we can see and it's really where we're going to retire. So this came as really a shock. It was never discussed with us in advance or any kind of warning and we just feel, as my husband said, very betrayed and wonder, if it continues, if this is where we want to continue to live.

We do have a letter on file that Mr. Cohen did write stating that Mr. Miller had told him he planned on selling the property, so that's something we can give you a copy of if you wish. Thank you.

CHAIRMAN SULLIVAN: Thank you, ma'am.

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Anaya.

COMMISSIONER ANAYA: I'd like to see that.

CHAIRMAN SULLIVAN: Just pass it down after you take a look at it. Okay, who else would like to speak: Yes, sir. State your name.

[Duly sworn, Bobby Lee Trujillo testified as follows:]

BOBBY LEE TRUJILLO: Chairman Sullivan, Commissioners, I developed the land right across the street from the Millers' property. It's called Vista de las Campanas. And I'm wondering if you folks received a letter from our association as well in opposition. If you didn't I will hand one out. I'll just do so.

CHAIRMAN SULLIVAN: Just hand them out, just in case. Commissioner Montoya is well organized. Oh, yes. I did see that.

MR. TRUJILLO: So I don't repeat everything that's already been said, one of the things that I wanted to make mention of is when myself and my co-developers developed Vista de las Campanas, and I believed this was developed before the Millers' subdivision, when we went to the County, of course the County gives us restrictive covenants that we've got to abide by and what we did is we went by the restrictive covenants or the questionnaire that's given to us by the County that says these got to be in your restrictive covenants. So when we made our restrictive covenants, we obviously included everything that the County wanted in it. One of the things that they wanted in it was that it was a 2.5-acre minimal subdivision. If we could have gotten more out of it we would have, but again, I have always been told that that entire area is 2.5-acre parcels. Thank you.

CHAIRMAN SULLIVAN: Okay. Thank you, Mr. Trujillo. Next speaker, please.

[Previously sworn, Don Murphy testified as follows:]

DON MURPHY: Mr. Chair, Commissioners, I'm Don Murphy. I live at 15 Camino Delilah. I've been in contact ever since this issue came up with about 21 lot and homeowners. Some of them are here this evening and will speak for themselves. Others are out of the state so I'm representing them as well. Again, in the spirit of the request you made, I won't repeat what's already been stated, but we are all very concerned about the density issue, impact on water, impact on traffic, and of course, impact on our understanding of a 2.5-acre limit minimum for homes in the area.

We also agree that the probability is that Mr. Miller, the outcome of this, will be development and that the property will end up being sold for financial gain. What hasn't been mentioned and what I'd like to mention and don't want to sound defeatist, but if the Commission acts against the appeal, in favor of Mr. Miller, we ask that you place a restriction on this. You've done this in the past and I have three names and case numbers if they would help, in the past you've placed restrictions where there can be no sale for ten years. We ask in the spirit of this that there be a restriction of 20 years. And if Mr. Miller and his family are genuine in this, that poses no hardship for them.

So the final statement would be a request for a restriction, should you act against this appeal. Our plea is that you act in favor of the appeal. Thank you.

CHAIRMAN SULLIVAN: Thank you, Mr. Murphy. Next please. Who's letter was this? We need to give someone back their letter. If you want that entered into the record you need to give a copy to the Clerk. Yes, sir. Go ahead.

[Previously sworn, Christopher Huffnagel testified as follows:]

CHRISTOPHER HUFFNAGEL: My name is Christopher Huffnagel and I live in Colinas Verdes. My concern here is as what other people have mentioned already. I'm not going to be directly impacted by looking at another house or anything, but I did buy my property with the understanding of 2.5 acres, that it will be staying relatively undeveloped and

that there's elbow room between each of our homes. I am here because there is a lot of open property adjacent to where I live right now. I have five acres that are adjacent to me. If I had the financial means I'd buy it tomorrow to protect it. But the possibility that it could be split into five one-acre lots with five homes right next to me really does bother me and if somebody buys it, owns it for five years like Mr. Miller is claiming and then splits it, then I have five homes next to me in five years. And that is a question that bothers me. Thank you.

CHAIRMAN SULLIVAN: All right. Thank you, sir. Who else? Step forward.

[Previously sworn, Neil Miller testified as follows:]

NEIL MILLER: Good evening. My name is Neil Miller and I'm the subject of much of this opposition. Please give me a few moments to collect myself and address a lot of these concerns that people have. I just want to give some background information briefly. I did include a letter that was addressing the appeal. I've lived in Santa Fe for nearly 20 years. My wife and I moved here. My son is 19 years old. He was an infant when we moved here. My daughter is 16 years old. She was born in Santa Fe. She's a native New Mexican. We lived downtown in the south central region of Santa Fe for many years in a small home saving our money so that we could purchase this land out in this area. I was one of the first to purchase the land out there.

Dan Clint was one of the very first. He and I were out there, bought the land and I had planned on living there for a very long time and I still plan to live there for a long time. There are many inaccuracies and falsehoods in both the appeal and in some of the comments that people made today and I would like to address some of those. I do want to point out that I'm very respectful of the honest concerns of many of the people here. I do understand that we have an honest difference of opinion. I think some of their issues are bogus and I'll point out which issues I think are bogus. I do think they do have one honest concern and that is the potential to increase density. And I have to point out that I'm not asking for a variance. I have complied with everything. My application has passed muster with the EZC, with the lawyers, the staff. I've submitted my covenants. And my covenants do not place a restriction on family transfers. I don't know what covenants they've handed to you but my covenants were submitted with the application.

I have a copy of the covenants with me here. [Exhibit 1] They were with the application when the application was approved and when the EZC approved unanimously. I do want to point out that many people do support me. Okay? I have gotten letters and I've gotten phone calls from some of the people in our region that do support me. They do feel that more harm is being done to our neighborhood by the animosity being created from people opposing this, opposing a single extra home going into the region than by the extra home itself. I'm not setting a precedent here. There's not a precedent that's being set. The family transfer option has been going on for decades. Okay?

Many of the people here that spoke aren't even in my neighborhood. They come from distant neighborhoods. So I don't even know how their testimony even applies to what we're discussing here. Again, I have respect for my close neighbors and I took great pains to be sure that when we created a building site that the building site would not affect or impact any of

their viewscapes and it doesn't. Okay? So a couple of the things that I had heard tonight, I do want to address. I did mention that not everybody is in opposition to this, but obviously many people are. My recommendation would be, instead of opposing me, I've followed the law, I've followed the regulations. I've done everything and I'm in compliance. They could either fight the law, try to change the law or something that I recommend and I really believe in is to unify their covenants. If there are so many people here that are opposed to this and they're mainly concerned not about my one house but that I might set a precedent, then let them unify their covenants so that it disallows family transfers in the future. Everyone here can make that agreement and they can put that in an amendment and they can file that with the County. And that will be binding on all future heirs and anybody else that purchases that land. And that would easily solve that problem.

As far as the water is concerned, I've spoken with well drillers. I've spoken with Lujan, and I've spoken with the senior Lujan who has been drilling wells for nearly 40 years and I spoke with his son as well. They shook their head in confusion about some of the concerns here that putting another well in the area would cause problems with other wells in the region. That simply is untrue. Also the proposed area where the new well would go is at least probably 200 maybe 300 feet from the existing well. In fact it would probably maybe even could reduce some of the problems that they think that are being created because the new well could actually have two hook-ups. So one hook-up could actually even be removed from the existing well so that instead of four people on the existing well, there would only be three.

So there's plenty of water, geo-hydrological reports for the region indicate that there's plenty of water to last into the next 100 years for that area. Somebody came up here and said that I've been selling land or something to that effect. I couldn't quite hear her. Was that correct? That's totally false. I don't know -- she said I was selling land in La Tierra or something to that effect. I have no idea what she's talking about and it's just simply false.

All homes in our area are not 60 to 70 feet off of the main road. There are many homes, if you go down Fin del Sendero that are just right of the right-of-way. Many homes have been built just 20, 25 feet right off of the right-of-way. The building site that I chose for our land is off of Fin del Sendero. It's not even on the corner of Fin del Sendero. It's on one teeny little side street where there's maybe a handful of homes. Six, seven homes on this street. It's off on this one little side street and it's a minimum of 25 feet back from that road itself, is where the building site begins. I've had two builders out there to look at that area to help me specifically pick an area that would have the least amount of impact on neighboring viewscapes. I was particularly concerned about Bobby Trujillo's land which was across from me and a new home there would not impact him and I was concerned about the Finleys next door to me and a new home would not impact them. In fact, the home that would be built here would be 200 to 300 feet away from the Finleys' existing home. And they are the closest home to where this building site exists.

As far as me selling the land, that's not true either. Okay? I have no intention of selling my son's land. We're deeding that to my son. He just turned 19. We're making other plans for our daughter so that we can make plans for them so that they have opportunities to maintain

their roots in Santa Fe. But there's no plans to sell his property and to be quite honest with you, Bob Finley had suggested, was it Bob Finley? Had suggested placing a restriction on that. I have no problem with that. I have no problem with placing a ten-year restriction on my son's property that it won't be sold. In fact, we have no plans at this point to even build. We don't have the money to build. I'm simply trying to deed to my son -- I've been told by one member in this audience here two things that were particularly distressing to me. One was that since I'm not Hispanic and have not been in this neighborhood for three generations, I'm not entitled to the family transfer. And the second thing I've been told was that the EZC decision was immaterial. That the only thing that's important is that a lot of people show up here today to influence your decision. And that concerned me as well.

So I'm not selling my son's property. We're deeding it. We have no plans in the immediate future to even make any changes to that area and I have no problem to add an extra condition that there's no sale on that property for the next ten years as well.

CHAIRMAN SULLIVAN: Okay. Thank you, Mr. Miller.

COMMISSIONER DURAN: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Duran.

COMMISSIONER DURAN: I have a couple questions.

CHAIRMAN SULLIVAN: Okay. These are for Mr. Miller?

COMMISSIONER DURAN: For Mr. Miller. Mr. Miller, in 1998, you signed an agreement with your neighbors that said that, it says as follows, "The owners desire to provide for certain water conserving covenants and measures and to preserve and maintain the single family residential character and value of the property." And you signed that in 1998 with all your neighbors. Why'd you change your mind?

MR. MILLER: Why did I change my mind? So is that considered a binding restriction that trumps a family transfer later in the future?

COMMISSIONER DURAN: To me, what that means is that you agreed in good faith with your neighbors that you were going to work with them to maintain the single family residential character of the area.

MR. MILLER: I think that to me a single family character in my mind means no apartment complexes, no multi- -- we live in a nice neighborhood where there's no trailers or anything of that nature.

COMMISSIONER DURAN: Okay. That's fine. Thank you very much.

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Miller, do you own any other property?

MR. MILLER: Yes, I do. And I just purchased it, just two, three months ago.

COMMISSIONER ANAYA: And how many acres is that?

MR. MILLER: That's 2.5 acres.

COMMISSIONER ANAYA: Is that the only property?

MR. MILLER: That is the only property. And the way I was able to do that is my father passed away in the spring of this year and he left a small amount of money, very

small. And I was able to -- I acquired that money in the summer and his passing away had made me put my thoughts towards my children's future. And that's why I decided that -- I had been aware of the family transfer option for a long period and it was only with my father's passing that I started thinking more seriously about planning for my children. So that was why we did the family transfer and that's why I was able to have that money and to be able to purchase that land and set that aside right now.

COMMISSIONER ANAYA: And where is that property?

MR. MILLER: That's three blocks away in the same area.

COMMISSIONER ANAYA: Thank you, Mr. Miller.

CHAIRMAN SULLIVAN: Okay. Thank you, Mr. Miller. Anyone else who would like to comment on the application or the appeal?

[Previously sworn, Carl Moore testified as follows:]

CARL MOORE: Mr. Chair, Commissioners, I want to make one very small, quick point.

CHAIRMAN SULLIVAN: Could you give us your name, please?

MR. MOORE: I'm sorry. My name is Carl Moore. Mr. Miller says that his construction of a single home would not be a precedent on the one hand. And then on the other hand tells us to organize to consolidate covenants so after he builds his one home this wouldn't happen elsewhere. I think he's saying it would be a precedent and we should protect against it. I just wanted to point that out. Thank you.

CHAIRMAN SULLIVAN: Thank you. Anyone else?

[Previously sworn, Janet Bostelmann testified as follows:]

JANET BOSTELMANN: My name is Janet Bostelmann. I live in Colinas Verdes and would it be reasonable to request that Mr. Miller show the letters from the people that he said are in favor of his action here?

CHAIRMAN SULLIVAN: He's provided the testimony that he wants to provide and so we're not cross examining him. If he wants to provide those he's welcome to do it.

MS. BOSTELMANN: But none of those people are here tonight. You didn't ask for a vote, right? For the people in favor?

CHAIRMAN SULLIVAN: No. We let anyone speak, whether they're for or against.

MS. BOSTELMANN: But no one spoke, other than Mr. Miller.

CHAIRMAN SULLIVAN: To date, no one appears to have been speaking in favor of it other than Mr. Miller. That's correct.

MS. BOSTELMANN: Thank you.

CHAIRMAN SULLIVAN: Sure. Yes, ma'am.

MR. MURPHY: I'm Don Murphy. I'd like to respond to the comment --

CHAIRMAN SULLIVAN: Wait a minute. Mr. Murphy, you've already spoken, right.

MR. MURPHY: Yes, I have.

CHAIRMAN SULLIVAN: Okay. We only get one chance.

[Previously sworn, Melissa Cantwell testified as follows:]

MELISSA CANTWELL: My name is Melissa Cantwell and I live at 19 Camino Delilah. And my husband and I support everything that the neighbors have already said so I won't repeat any more of that. But I would like to make a point and argument against one of the things that Neil has stated when he was up here. He said that they don't have intentions of building because they don't have the money, but in an e-mail from Neil dated October 14th there's a paragraph that says, "Our original wish was to build as soon as possible to offset rising building costs, perhaps as early as next spring or summer. Out of respect for neighborhood opposition we decided to postpone for an extended period. This compromise guarantees this extended period. I believe this compromise offers benefits to everyone involved. However, if your group agrees with this compromise it must be enacted as soon as possible before the appeal deadline. If your group continues to move forward with your appeal and you lose, we will be under no obligation to risk the added expense of building years rather than months done the road." So I'd just like to make that point because there's been something said in contradiction to what he just stood up here and said. Thank you.

CHAIRMAN SULLIVAN: Okay. Thank you. This is not an examination, cross examination. This is a public hearing and each person gets one chance and three minutes or close to it. Mr. Miller, I think I gave you a little bit more time out of understanding the fact that you are the owner we want to be sure we had all of these issues. But we can't spend all evening going back and forth. Now is there anyone else who has not spoken this evening on this issue, either for or against who would like to address the Commission?

[Previously sworn, Teresa Clint testified as follows:]

TERESA CLINT: My name is Teresa Clint and I'm a neighbor, and I've known Neil for quite a long time and I just wanted to say that my understanding of his intention was from the beginning to do this family transfer. He found out about it when he was applying for his split and we had children that play together and that he had always had the intention of doing it.

CHAIRMAN SULLIVAN: All right. Thank you, ma'am. Anyone else who hasn't spoken this evening. We are only on item 2 on an agenda that goes up to item 9 so we need to move forward. If there's not anyone else who's going to speak then we're back to the Commission for discussion. Commissioner Duran.

COMMISSIONER DURAN: I'd like to make a motion that we uphold the -- help me with this. I want to move in favor of the appellants and deny the family transfer, for a couple of reasons. And one of them is in 1998, Mr. Miller made a promise to his neighbors through a covenant and now he desires to break it. And basically, that's it. So my motion is to uphold the appeal and deny the family transfer.

CHAIRMAN SULLIVAN: Okay, there's a motion. Is there a second?

COMMISSIONER ANAYA: Second.

CHAIRMAN SULLIVAN: Second to the motion. Discussion?

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, I feel that Mr. Miller, if this was his only piece of property, that he did everything correctly. The intent of the family transfer, the way I read it is that if somebody has a piece of property, and that's the only piece of property they have, that they -- and they want to help their child out, that was the reason for the family transfer. But if you have other pieces of property that you could give to your child, then I don't think that this is the right way to do it. I also agree with Commissioner Duran on the covenant that he had signed and I believe that's all I have, Mr. Chair.

CHAIRMAN SULLIVAN: Thank you, Commissioner. Commissioner Montoya.

COMMISSIONER MONTOYA: Nothing.

CHAIRMAN SULLIVAN: Okay. Further discussion? Hearing none, there's a motion and a second.

The motion to grant the appeal on EZ Case #A 03-4851 passed by unanimous [4-0] voice vote.

XIII. A. 3. CDRC CASE # V 03-5155 – John Work Variance. John and Victoria Work, Applicants, are Appealing the Decision of the County Development Review Committee to Uphold the Land Use Administrator's Decision to Deny a Variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code. The Property is Located at # 17709-C HWY 84/285, within Section 28, Township 19 North, Range 9 East (Commission District 1)

DOMINIC GONZALES (Review Specialist): Thank you, Mr. Chair, Commissioners. On August 28, 2003 the County Development Review Committee heard this case. The decision of the CDRC was to uphold the Land Use Administrator's decision to deny the placement of a third home on 1.58 acres. The applicant is requesting a variance of lot size requirements of the Land Development Code in order to allow three homes on 1.58 acres. The property is located at 17709-C Highway 84/285 within the Basin Hydrologic Zone. Article III, Section 10 of the Land Development Code stated the minimum lot size in the area is 10 acres per dwelling. Lot size may be reduced to 2.5 acres if the applicant signs and records water restrictions.

There are currently two homes and two septic systems on the property. The property is served by an onsite well which serves the existing homes. The applicant has proved that both homes are legal non-conforming with the applicant residing in one home and the applicant's elderly mother residing in the second home. The applicant states the third home will be for an 18-year old son who will be assisting the applicant in operating and maintaining the family business. All

three homes will be served by an onsite existing well and the third septic will be tied into the dwelling utilized by the applicant's mother. The applicant has not indicated specific sections of the County Code that would justify this request for a third dwelling unit.

Article II, Section 3, Variances of the Code, states that "where in the case of proposed development it can be shown that strict compliance with requirements of the Code would result in extraordinary hardship to the applicant because of unusual topography or other non-self-inflicted conditions or if these conditions would result in inhibiting the achievement of the purposes of the Code the applicant may submit a written request for a variance." This section goes on to state, "In no event shall a variance modification or waiver be recommended by a development review committee nor granted by the Board if doing so the purpose of the Code would be nullified."

Recommendations: Staff recommends denial of the appeal based on Article III, Section 10 of the Land Development Code which states the minimum lot size in this area is 10 acres per dwelling. Staff recommends the request for a variance be denied the intent of the Code is to set minimum lot size and density in this area at 10 acres per dwelling.

CHAIRMAN SULLIVAN: Okay. Dominic, let me understand, on this one the lot size is 1.58 and there are two existing permanent homes on the lot. Is that correct?

MR. GONZALES: That's correct, Mr. Chair.

CHAIRMAN SULLIVAN: And then the applicant is requesting, or I assume, because of the conditions -- and did we enter those into the record, by the way? The conditions?

[The conditions are as follows:]

1. A temporary permit will be issued for a period of ~~two~~ five years and subject to extensions for consecutive ~~two~~ five year periods by the CDRC. The applicant at that time must prove hardship still exists. [Modified at motion.]
2. Water use shall be restricted to 0.25 acre-feet per dwelling. A water meter shall be installed for all three homes. Annual water meter readings shall be submitted to the County Hydrologist by September 30th of each year. Water restrictions shall be recorded in the County Clerk's Office. Installation of meters for existing residential units prior to issuing development permit.
3. No additional dwellings will be allowed on the property.
4. The existing driveway will serve all homes.
5. The applicant must follow all other building permit regulations including terrain management improvements as required by staff.
6. Failure to comply with all conditions shall result in administrative revocation of the appeal.
7. The applicant shall submit an Environmental Department liquid waste permit.
8. The mobile home is not to be placed on a permanent foundation.
9. No permanent fixtures may be attached to the house.

CHAIRMAN SULLIVAN: That they be able to bring a temporary dwelling on the property. Is that correct?

MR. GONZALES: That's correct. I think the applicant is going to want to request that condition number one be taken off. The is going to request that condition number one be taken off.

CHAIRMAN SULLIVAN: Oh, be taken off. Okay. So the applicant is going to request that this third unit on this property be a permanent dwelling unit.

MR. GONZALES: Mr. Chair, that's correct. And is there one well serving all three, did you say?

MR. GONZALES: Mr. Chair, that's correct.

CHAIRMAN SULLIVAN: And there are currently two homes and two septic systems.

MR. GONZALES: Mr. Chair, that's correct.

CHAIRMAN SULLIVAN: And then there will be a third septic system for the third home.

MR. GONZALES: What's going to happen is they're going to tie into the one septic. There's two septic -- or there's one septic now on the property that's serving the two houses that's on there now. So they're going to get an additional septic or they have an application in for an additional septic. They're going to tie in the mobile home, the two homes for the applicant's mother and the applicant's son are going to be living in. So that's going to be tied in according to the conditions by the Environmental Department. That's what they're going to do.

CHAIRMAN SULLIVAN: So you're saying there's two septic systems on the property now and they're going to bring in a third one.

MR. GONZALES: There's only one now. There's only one septic system. They did fill out an application for a second one, for a second one to be added on the property.

CHAIRMAN SULLIVAN: Because the report says there are two homes and two septic systems on the property.

MR. GONZELES: Yes, it was clarified today.

CHAIRMAN SULLIVAN: Okay, so there's two homes and one septic system, but one septic system serves the two homes. And that won't change.

MR. GONZALES: That won't change.

CHAIRMAN SULLIVAN: Then there'll be another permanent home with another permanent septic system and another well. So a completely different thing. Now, is this just to locate -- this is a variance to locate a third residence. This is not a request to divide the lot. Is that correct?

MR. GONZALES: It's just for a third residence.

CHAIRMAN SULLIVAN: Okay, we want to get that clear. Those are my questions. Other questions for staff?

COMMISSIONER DURAN: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Duran.

COMMISSIONER DURAN: Oh, Joe, go ahead.

MR. CATANACH: Mr. Chair, I did want to clarify that we had requested an

accurate site plan of this property. My understanding is that -- and again, just to inform the Commission that an accurate site plan was requested, but my understanding is there are commercial storage units towards the front of this property, closer to Highway 285. I just wanted to clarify that. In fact the site plan is not, may not be accurate because it's not showing existing commercial storage units on the property.

CHAIRMAN SULLIVAN: So you're saying, Mr. Catanach, that on the 1.58 acres, included within that 1.58 acres there's some storage units.

MR. CATANACH: That's my understanding. We need to get that clarified because we never got the updated site plan.

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Montoya.

COMMISSIONER MONTOYA: On that point. You're talking about Exhibit C?

MR. CATANACH: That's correct. That's the plat of the property. That plat is actually showing two separate lots. My understanding though is that this property is not two separate lots it's one lot of 1.58 acres.

CHAIRMAN SULLIVAN: I can't read -- what does it say the front lot is? It says 1.something acres.

MR. CATANACH: I'm thinking that was zero.

CHAIRMAN SULLIVAN: That's a zero. So there's a one-acre lot on the front, that's two separate lots, which has storage units on it. Then there's a .49-acre lot on the back, which there are going to be three homes on.

MR. CATANACH: But this request is being presented as if this was one tract of land of 1.5 acres.

CHAIRMAN SULLIVAN: But your information is that it's in fact platted as two tracts of land.

MR. CATANACH: This plat indicates that it was prepared in 1980 but I can't read the entire plat. There seems to -- what I do know is what Dominic has told me is that the deed that was submitted for this property indicates that this is one tract of land of 1.58 acres, not two separate lots. Obviously, if this were two separate lots then it would be a request for three units on .49 acres and so that's why I wanted to clarify to the Commission existing development on this property and also that this is being presented as a third unit on 1.5 acres. But there certainly seems to be some discrepancies as whether in fact this is a request for three units on .49 acre. My understanding is that a deed was submitted to Dominic that indicates this property is a single tract of land of 1.58 acres, two units, storage units and a proposed third unit.

CHAIRMAN SULLIVAN: Do you have a copy of that deed then, Dominic?

MR. CATANACH: I wanted to have the Commission know all the information on this property.

CHAIRMAN SULLIVAN: Thank you, Mr. Catanach. Commissioner Duran.

COMMISSIONER DURAN: I was just wondering if we could go forward with

this thing with the assumption that it's a 1.5-acre tract of land and not get into the discussion of whether it's two lots of not. I guess the question I have though is what we have before us doesn't indicate all the improvements on the property?

MR. CATANACH: Well I think there's two questions. Whether in fact, if this is one tract of land, then that's correct, it does not show all the improvements on the property. If this is two separate lots then this is a request for a third unit on a half acre, and so that needs to be clarified.

COMMISSIONER DURAN: Well, the deed, I think we could always make -- the application is for three houses on 1.5 acres.

MR. CATANACH: Yes.

COMMISSIONER DURAN: If it gets approved we could make a condition that they do a lot consolidation plat if in fact it is two lots.

MR. CATANACH: Yes.

COMMISSIONER DURAN: Okay. But I'm more concerned that you've provided us a plat that doesn't have all the improvements. So we don't really know what kind of impact the proposed third unit is going to have on this lot. What else is on there that you're aware of?

MR. GONZELES: On the property itself or the surrounding properties?

COMMISSIONER DURAN: On the property. On the 1.5 acres.

MR. GONZALES: The two mobile homes and then storage units.

COMMISSIONER DURAN: There are storage units? And they front on 285 or at the very back?

MR. GONZALES: Mr. Chair, Commissioner Duran, it's on the front. I think it's at 1.098 acres is where the storage units are on.

COMMISSIONER DURAN: Okay. Have you ever talked to the applicant about applying for a temporary placement of a mobile home?

MR. GONZALES: Mr. Chair, Commissioner Duran, that's why we went to the CDRC for a temporary replacement and the applicant would prefer that it would be permanent for the son.

COMMISSIONER DURAN: So he didn't agree to a temporary placement?

MR. GONZALES: Actually it was the CDRC's decision also to possibly make it a permanent.

COMMISSIONER DURAN: And CDRC approved this?

MR. GONZALES: They denied it.

COMMISSIONER DURAN: They denied it. It denied it. They denied as permanent.

MR. GONZALES: Actually, they were upholding the Land Use Administrator's decision for that.

COMMISSIONER DURAN: My question was so the applicant was never in favor of possibly accepting a temporary placement of that third dwelling.

MR. GONZALES: Mr. Chair, Commissioner Duran, that was the condition

that we gave to her. She would prefer that it would be -- [inaudible]

COMMISSIONER DURAN: Thank you.

CHAIRMAN SULLIVAN: It seems, Dominic, that this is a quit-claim deed done in 1992. The survey was done in 1980 and you're right, the quit-claim deed does appear to be for the full property, the 1.5 acres, but it appears that it's Susan Paulsen quit-claiming to Victoria Work Chavez this property in 1992, which is based on this map, which has two lots. So the description appears to describe the whole exterior boundaries but there may be a question of whether there's one or two lots here. But it seems that as Susan Paulsen quit-claimed to Victoria Work Chavez the entire property, whether it's one or two lots, this doesn't say, but it does say she was given the entire property. I'll give this to our real estate expert here.

COMMISSIONER DURAN: I was going to ask a question of Joe.

CHAIRMAN SULLIVAN: Commissioner Duran.

COMMISSIONER DURAN: Joe, if the plat was recorded prior to the Code, which the deadline was December 1980.

MR. CATANACH: Yes, that's correct.

COMMISSIONER DURAN: So this does constitute two lots, does it not?

MR. CATANACH: Well, I would say that if after '81, if you need a plat to subdivide property, not just a deed, it works the same way to consolidate. You need a plat to consolidate property, not just a deed. So I guess certainly the point I was making is I wanted to inform the Commission of discrepancies and give them all the information and that maybe there's enough discrepancies that we just need to look at the documents and come back on this request. There are discrepancies.

COMMISSIONER DURAN: But the applicant has come forward requesting for three houses on 1.5 acres.

MR. CATANACH: That's what the applicant has submitted a request for. Yes, Commissioner.

COMMISSIONER DURAN: Okay. Thank you.

CHAIRMAN SULLIVAN: Okay, other questions? None? All right? Thank you, Dominic. Let's hear from the applicant. Is the applicant present?

[Duly sworn, Victoria Work testified as follows:]

VICTORIA WORK: Good evening. I'm Victoria Work and I've lived in Cuyamungue for the last 18 years. My father was a property owner there for over 40 and I ran the Valley U-store for him for the last 18 years and we currently do have a business there. We have two single-wide mobile homes and my mother and my son live in one mobile home and myself and my daughter live in the other mobile home. I came before the Board in July asking for a third variance. We needed, first of all, I knew I was going to need my son's help with the business. I've got back problems myself and it's getting harder for me and also my father was becoming very ill and we wanted to bring him to come and live with us but we didn't have enough room and unfortunately he died in August.

I'm still coming before you and I'm asking you for this variance. Excuse me. I don't know why I'm so nervous. I do need my son to help me run the business and my father stressed

to me how important it was to not only -- he sure made me work hard and earn what I've got but also now I feel it's time for my kids to step in. I do want to make it clear to the Board that this will remain in the family and I think it's important that really there's nobody around us that we would affect. My closest neighbor is 500 yards and a deep arroyo away from me. We sit in the back of the property. Where you live you can't see it from the highway. On the other side of me is a storage lot and behind me is like unused BLM land.

What else do I want to say. Our well is in the front of the storages so it sits over 200 yards away from where we actually live in the back and as far as the two tracts of land, I was never approached with that problem. This is the first I hear of it. I do know that my father built the storages many years before he came and approached the Board and asked for the two residences and the property is zoned commercial/residential. I do know that. I also know that I have something here on the well. That our well is 140 feet deep. And it is one septic tank and both trailers are tied into it and I have a huge leach line. I think it's a 60-foot leach line. I wanted to make sure that we never had to dig another leach line because unfortunately, one time we had a tree that got into a pipe and it broke a line in the septic tank but we thought that it was the leach line. So before we realized that properly, or before we realized that problem that it was the pipe, we put in a really bit leach line.

I am willing to do whatever it takes. If you guys want me to put another well, I'll do it. If you want me to add another septic tank, I'll do it. I'm willing to do whatever it takes to make this happen. The reason that I'm asking for like this third residence is that I've lived in a little bitty mobile home all these years. Now that my father's passed away and has left me something I can afford to own a larger home and something where I can have all the family in it. I've always had to live with my son in one half, my daughter in the other. Even though we'll all still be in separate residences, at least we can have one big place together. And if you guys decide -- there's really no point in making it temporary for me because this is something that's going to last for our family, unless one of us passed on or whatever then we all do need to live there. Thank you.

CHAIRMAN SULLIVAN: Thank you, Ms. Work. Questions for the applicant?

COMMISSIONER DURAN: Ms. Work, I have a question.

CHAIRMAN SULLIVAN: Commissioner Duran.

COMMISSIONER DURAN: So your entire family is going to be living on the property?

MS. WORK: It will be -- my mother lives in one mobile home with my son, and then I live with my daughter in the other second mobile home. So the third residence, my son will get one of the houses and I'll live in the other one. Me and my daughter. My mom will still live in her own home.

COMMISSIONER DURAN: Okay. Thank you.

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Montoya.

COMMISSIONER MONTOYA: Ms. Work, are you saying that you would hook up to the existing well and to the existing septic with the new residence?

MS. WORK: I would do that if that's what you wanted me to or if you wanted me to dig a new well, I'd do that too.

COMMISSIONER MONTOYA: Mr. Chair, Dominic, what is staff, what is their position on this? Is it something that they could do that or is staff saying that if there's a new residence they need to put a new well and a new septic? Or Joe?

MR. CATANACH: Mr. Chair, Commissioner Montoya, staff is recommending denial of this request. The request does not meet minimum standards for minimum lot size for zoning or for septic tank. So it would be difficult for me to address the question as to whether staff would prefer to see another well. Based on the size of the property, the property has the total number of dwelling units that would be allowed and meet minimum standards for septic tank and well.

COMMISSIONER DURAN: Okay. As I look at the conditions on Exhibit E, there's no mention -- you're absolutely right. But if this was something that was being considered, would that potentially be staff's recommendation in the case of adding a well and adding a septic?

MR. CATANACH: Mr. Chair, staff has, if there is consideration of this, staff is recommending condition seven, which is referring this matter to the State Environment Department as to whether there should be another septic tank on the property or whether they should connect to the existing septic tank. Those are issues that we rely on the Environment Department to address.

COMMISSIONER MONTOYA: Thank you, Mr. Chair. Thank you, Joe.

CHAIRMAN SULLIVAN: Thank you, Commissioner. Ms. Work, I have a question. You live in one of the single-wide mobile homes and who lives in the other?

MS. WORK: My mother.

CHAIRMAN SULLIVAN: Your mother. Okay, and basically, you're looking to get a -- you're not looking to bring anyone else. You're looking to bring in your son. Is it your son?

MS. WORK: My son.

CHAIRMAN SULLIVAN: To help with the business. Okay, what about a condition where you build a stick-built home and then you remove the trailer that you were living in. So there would still only be two residences. Your son could live in part of the house that you built, depending on how you build it. See what I'm saying? You would still --

MS. WORK: I understand that and that is a consideration except for my mother pays for that house herself and she owns it and it was from my father and it's kind of hard for me to ask her to have to move in with all of us. She has diabetes and --

CHAIRMAN SULLIVAN: No, she would stay.

MS. WORK: Yes, she would stay but --

CHAIRMAN SULLIVAN: She would stay in the trailer she's in.

MS. WORK: She would stay in the trailer she's in, but --

CHAIRMAN SULLIVAN: The one you're in would be moved when you build your house. After your house is complete and you move in, you would remove the trailer that

you had been living in.

MS. WORK: Okay, I understand that, but you know, my son is a growing man and if he's going to keep with this business, if he's going to stick with me and help me he's going to need to eventually -- he needs to start working on having his own things and not living with me.

CHAIRMAN SULLIVAN: If he wants to party, he'll have to go somewhere else to party, I guess.

MS. WORK: Of course.

CHAIRMAN SULLIVAN: It's just a suggestion. Mr. Catanach, let me ask, on your statement that you have a problem with the areas for the septic tank. The Environment Department requires 3/4 of an acre for a septic tank?

MR. CATANACH: Minimum lot size for a well and septic is 3/4 of an acre.

CHAIRMAN SULLIVAN: Okay. So with two units on this property, let's assume for the time being it's 1.5 acres if we put a condition of lot consolidation as Commissioner Duran suggested. Then we've met that condition, haven't we?

MR. CATANACH: For the two existing units that are on the property right now.

CHAIRMAN SULLIVAN: For a future one and if the other one's removed we would still only have two.

MR. CATANACH: The property is adequate for two residential units to meet minimum for a septic tank.

CHAIRMAN SULLIVAN: Okay. I just wanted to get that clarified. Thank you. Other questions for Ms. Work?

COMMISSIONER DURAN: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Duran.

COMMISSIONER DURAN: I think Ms. Work has two dwelling units on .4 acres and has another lot that she could put a dwelling on. That's how I look at it.

CHAIRMAN SULLIVAN: That could be too, but that's not the application.

COMMISSIONER DURAN: I know, but I'm just bringing that up.

CHAIRMAN SULLIVAN: So it's a commercial lot that could have a house on it, you're saying. That may be. And I think that goes back to Mr. Catanach's question that we don't have enough information as to what's available, as to what these lots are. Other questions of the applicant? If not, thank you, Ms. Work.

MS. WORK: Can I add one thing else. If you guys want to deny it, then I will take your offer of a house and live in one mobile home so I can build a house.

CHAIRMAN SULLIVAN: Well, let me just speak personally and certainly not for the Commission. It looks like there may be some ways to make this work and we don't have enough information in front of us to understand how it would meet the Code. I don't know if the other Commissioners feel that way but it seems like there's some possibilities to make this work and maybe the application needs a little fine-tuning. But we understand that you're willing to work with the conditions and appreciate that. Additional questions?

COMMISSIONER DURAN: Just one last one.

CHAIRMAN SULLIVAN: Commissioner Duran.

COMMISSIONER DURAN: Ms. Work, would you be opposed to a temporary placement of that third mobile home for a period of time. Let's say that period of time is five or ten years? At the end of that time you would either have to remove it or come back in for an extension.

MS. WORK: Well, if you guys gave me ten year that would be great because I'd probably be somewhere down the line later where I could afford to say, yes, temporary is an option. At this point, there's no way I could afford to put in a new mobile home for two years and then remove it. Financially, that would -- but if you said that, sure. I can see myself in ten years being able to comply with that very easily.

COMMISSIONER DURAN: Okay. Thank you.

CHAIRMAN SULLIVAN: Okay. Thank you. This is a public hearing so if there's anyone here that would like to speak in favor of or in opposition to this application, we'd like to hear from you know. Okay, we don't see anyone, so we're back to the Commission. What is the desire of the Commission with regard to this application?

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Montoya.

COMMISSIONER MONTOYA: Commissioner Duran's suggestion would put number one at ten instead of two then? Is that one of the conditions? Or is that even possible, under Exhibit D?

COMMISSIONER DURAN: Yes, we can do anything. I'm only kidding. I think ten years is fine.

COMMISSIONER MONTOYA: Joe, what's your opinion?

MR. CATANACH: A condition for temporary for two years -- staff has the responsibility to enforce a temporary which is easier [inaudible] A ten-year period is difficult to maintain the responsibility of enforcing that.

COMMISSIONER MONTOYA: So the way this reads then is that every two years, this could be extended. The applicant would come in and request an extension. And then the other thing I was thinking, based on some of the lack of information potentially that we have here, if we were to table this, when would we hear this again?

CHAIRMAN SULLIVAN: At the January meeting.

COMMISSIONER MONTOYA: It would come back at the January meeting.

COMMISSIONER DURAN: And why would you table it?

COMMISSIONER MONTOYA: Because of some of the ambiguities there are regarding whether or not this is two lots or one lot. Can we put the dwelling on this, on the 1.08 and not on the .4.

CHAIRMAN SULLIVAN: Ms. Work, what's between your two mobile homes now and the storage unit in that one-acre lot?

MS. WORK: What's between us?

CHAIRMAN SULLIVAN: Yes, is flat land? Is it an arroyo?

MS. WORK: You know what, I have some pictures. Did you guys get a copy of all the pictures?

CHAIRMAN SULLIVAN: I think we saw the pictures, but just tell me, is there room there to build a house?

MS. WORK: Yes.

CHAIRMAN SULLIVAN: You could build a house on that?

MS. WORK: Yes.

CHAIRMAN SULLIVAN: I don't know if it wouldn't be more economically feasible or viable for you to keep those back lots as an existing lot. If it's a lot, I don't know if it is, and you have a 1.083 acre lot in the front, on which you could build a house. Now, the only difference would be you couldn't build it down there in the back right next to your son and your mother, or build it or bring in a manufactured home or whatever. It would be on the other side of that lot line.

MS. WORK: Well, there is a piece of property on the south side of the storages. There's a large piece of property there. It's undeveloped. The mobile homes sit behind the storages and on the south side there's a large piece of property and I could put it there. It wouldn't be where I originally wanted it in the back where I've already planted all my trees for the last 18 years.

CHAIRMAN SULLIVAN: Oh, okay. So your storage units are further to the north of the property, but fronting --

MS. WORK: It's a large area in the back of the storage units. The mobile homes sit right together. They're even connected with a porch, so they're side by side. And then there's two small yards on each side of them.

MR. CATANACH: Mr. Chair, it's probably legal non-conforming. Those storage units have probably been there a very long time.

CHAIRMAN SULLIVAN: But I mean could additional commercial be put on this front parcel?

MR. CATANACH: The applicant would have the right to submit a master plan and request expansion of a legal non-conforming site.

CHAIRMAN SULLIVAN: But is it within our new corridor ordinance?

MR. CATANACH: I'm not positive about that. I know that that corridor and planning was done for the Arroyo Seco area. This property is not that far north.

CHAIRMAN SULLIVAN: Okay.

MR. CATANACH: This property is in Cuyamungue, I believe.

CHAIRMAN SULLIVAN: I see. But it could come forward under legal non-conforming. So the front property may have other commercial value as well.

MS. WORK: I know that the storages have sat on the property for 23 years. They were built.

CHAIRMAN SULLIVAN: Commissioner Montoya, I'm not sure if you're finished or not. Go ahead.

COMMISSIONER MONTOYA: Yes.

CHAIRMAN SULLIVAN: Other comments about the application?

COMMISSIONER DURAN: I have a question.

CHAIRMAN SULLIVAN: Commissioner Duran.

COMMISSIONER DURAN: Joe, you and I have been around the block more than once and I've been before the Land Use Department several times trying to establish legal lot of record and the Land Use Administrator has allowed me to provide them with either a deed that predates the Code or a plat and what I have here in front of me is the plat that predates the Code. Which means that there are two legal lots of record here.

MR. CATANACH: Excuse me, Commissioner Duran. The plat you're looking at predates the Code but it was recorded as an exhibit to a memorandum or declaration of trust. It was not recorded as a plat in 1980 it was recorded as an exhibit to a trust document in '85.

COMMISSIONER DURAN: I don't think that the Code requires that the plat be recorded. There are some early plats and King plats that --

MR. CATANACH: But usually there's deeds, recorded deeds that support unrecorded plats.

COMMISSIONER DURAN: So what you're telling me is that based on your knowledge of the Code that this plat, dated 1980 does not constitute two legal lots of record.

MR. CATANACH: No, I don't know that. It very well could be two separate legal lots. I don't have enough information to --

COMMISSIONER DURAN: What kind of more information would you need?

MR. CATANACH: I would need to see the deeds.

COMMISSIONER DURAN: They have a deed dated back to '92.

MR. CATANACH: Is that for the entire 1.5 acres?

COMMISSIONER DURAN: The woman that owned the property and sold it to Ms. Work had a survey prepared in 1980 by Medrano.

MS. WORK: That was my father.

COMMISSIONER DURAN: Medrano was your father?

MS. WORK: My father's John Work who gave me the property.

COMMISSIONER DURAN: Oh, okay. And they had it surveyed by Medrano into two lots back in 1980. So there isn't a deed until -- the deed that didn't create the two lots. The plat did.

MR. CATANACH: Commissioner Duran, I --

COMMISSIONER DURAN: You know as well I do that back in 1980 there was a real rush to record deeds prior to the adoption of the Code and it looks like this is what happened.

MR. CATANACH: I believe that there probably are pre-1980 deeds that describe each separate lot. So it's very possible that these are two separate lots. I'm not making an issue that these are not two separate lots. They very well could be two separate lots.

COMMISSIONER DURAN: Okay, what I'm leading up to is I think that your suggestion that she moves -- was it Commissioner Sullivan? That she moves the third mobile home to the other lot, I think it would have less of an impact on the variance that she's

requesting because it could very well be an existing condition, the two homes on that .4-acre tract, and now they're putting a residence on the larger one. Is there a motion?

COMMISSIONER ANAYA: Mr. Chair, I'll make it.

CHAIRMAN SULLIVAN: Okay, Commissioner Anaya.

COMMISSIONER ANAYA: I make a motion that we approve this case and that the temporary permit would be for five years and that it would go back to staff, and if it is two pieces of property, then that home would become permanent. Does that make sense?

COMMISSIONER DURAN: Yes.

MR. CATANACH: Meaning that the home would have to be sited on the one-acre lot?

COMMISSIONER ANAYA: Yes.

MR. CATANACH: Where the storage units are.

COMMISSIONER ANAYA: Yes.

COMMISSIONER DURAN: Right.

CHAIRMAN SULLIVAN: I would add that I don't think there's a need for another well, because we like to encourage shared wells, but I certainly think there's a need for another septic tank.

COMMISSIONER ANAYA: Yes. It's on the conditions.

COMMISSIONER DURAN: Okay. She's agreed to that.

CHAIRMAN SULLIVAN: But to put another well in, that's very expensive and I don't think that's productive. So let me understand the motion from Commissioner Anaya, which is that the temporary permit be issued for a period of five years and the applicant can confer with staff -- and it would be for the placement of a residence on the 1.083-acre. That in addition, the applicant confer with staff. If it is two lots, then that residence may be permanent, as opposed to temporary. And located on that lot. And in addition, that residence shall have its own septic system but does not need to have its own well.

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Montoya.

COMMISSIONER MONTOYA: So if it is deemed that it is two lots and the structure is put on the 1.03 or .08, then at that point, the five-year period would become null and void.

CHAIRMAN SULLIVAN: It becomes null and void and also condition number 8 would become null and void.

COMMISSIONER MONTOYA: Yes.

COMMISSIONER DURAN: What's eight?

CHAIRMAN SULLIVAN: Eight is the mobile home shall not be placed on a permanent foundation.

COMMISSIONER DURAN: Okay.

CHAIRMAN SULLIVAN: So if we're saying that if it's two lots, then it can go as a permanent structure, provided it's on that front lot. If it's only one lot, you can put the mobile home wherever you want, in the back where you like, but it will only be a temporary

period for five years, subject to extensions. Would that be for consecutive two-year periods or consecutive five-year periods? Let me ask the maker. I'm looking at condition one.

COMMISSIONER ANAYA: Consecutive two-year or consecutive five-year?

CHAIRMAN SULLIVAN: After the five-year.

COMMISSIONER ANAYA: Explain that.

CHAIRMAN SULLIVAN: Well, let's assume it's not two lots, and so she puts a temporary residence there. Does she have to come back to the Land Use Administrator after five years and she gets a renewal to leave the mobile home there. Does she have to come back every two years after that, or every five years after that?

COMMISSIONER ANAYA: Every five.

CHAIRMAN SULLIVAN: Every five. We didn't have a second yet.

COMMISSIONER DURAN: I second it.

CHAIRMAN SULLIVAN: Okay, Commissioner Duran seconds it. Is that okay with the seconder?

COMMISSIONER DURAN: Yes.

CHAIRMAN SULLIVAN: Okay. Mr. Catanach are you understanding this?

MR. CATANACH: Yes, Mr. Chair.

CHAIRMAN SULLIVAN: All right. Is anyone else?

COMMISSIONER DURAN: I'd just like to make one comment, Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Duran, discussion of the motion.

COMMISSIONER DURAN: I think that it would have been, I think that we should have known whether this was two lots before tonight's meeting. I think that staff should have been able to advise you a little bit better than what they did tonight. Because if you indeed have two lots, you wouldn't be coming tonight for a variance, because you have a pre-existing lot, you have a lot with a pre-existing condition, which is the two mobile homes. You'd be coming before us. So I think that staff in the future needs to make the determination as to whether or not these lots are legal or not based on the criteria or the issues and the application. So I think you have two lots.

CHAIRMAN SULLIVAN: All right.

The motion to approve CDRC Case # V 03-5155 passed by unanimous [4-0] voice vote.

CHAIRMAN SULLIVAN: You have a third residence. It may be temporary. It may be permanent. You'll see.

MS. WORK: Thank you so much. Merry Christmas.

[The Commission recessed ten minutes.]

XIII. A. 4. EZ CASE # S/V 96-4345 – Aldea L.L.C. Aldea L.L.C. (Arthur Fields), Applicant is Requesting and Final Plat and Development Plan Approval for a Residential Subdivision of 50 Lots on 11.59 Acres in Accordance with the Previously Approved Master Plan and a Variance of Section 3.4.7.B.1 of the Extraterritorial Subdivision Regulations Restricting Lot Sizes to Less Than 2,000 Square feet The Property is Located Off Avenida Frijoles within Section 20, Township 17 North, Range 9 East (Commission District 2)

VICKI LUCERO (Review Specialist): Thank you, Mr. Chair. I'll be presenting for Vicente. On October 9, 2003 the EZC recommended approval of the preliminary and final development plan subject to County staff's conditions. On October 29, 1996, the EZA granted master plan approval for a large-scale mixed-use subdivision consisting of 433 residential lots and 100,000 square feet of commercial space, school site and common area for community facilities, and 205 acres designated as recreational open space/parks on 345 acres which would be developed in phases. In December 1999 the BCC granted final plat/development plan approval for Phase 1 consisting of 220 residential lots, and 15 lots for commercial and community uses.

At this time the applicant is requesting preliminary and final plat and development plan approval of Phase 2A which is a residential development in accordance with the previously approved master plan. This phase of the development will consist of a total of 50 units/lots as follows: 32 Estate Houses; 6 Patio Houses; 10 Town Houses, two of which are affordable, and 2 Duplex Houses. Lot sizes will range from 1,839 square feet to 13,295 square feet

The applicant is also requesting a variance to Section 3.4.7.B.1 of the Extraterritorial Subdivision Regulations to allow two lots to have an area designated as suitable for building of less than 2,000 square feet. The two lots will be affordable lots and will be 1,850 square feet, and 1,839 square feet The previously approved townhouses are all 20 feet wide and the proposed townhouses are also 20 feet wide; however, the length of the proposed townhouses is shorter due to the lot sizes of less than the 2,000 square feet required. It is possible to widen the lots to 21.7 feet resulting in a 2,000 square foot lot. However, this will require a redesign of the current affordable townhouse plans, which will increase the ultimate cost of the unit.

Recommendation: The minimum size of lot allowed by the Extraterritorial Subdivision Regulations is 2,000 square feet The applicant is requesting a variance to allow 2 lots less than 2,000 square feet Staff considers the requested variance to be a minimal easing of the requirements. Staff recommends final plat and development plan approval and approval of the requested variance. The EZC recommended preliminary and final plat and development plan approval subject to the following conditions. May I enter the conditions into the record, Mr. Chair?

[The conditions are as follows:]

1. Compliance with applicable review comments from the following:

- a) State Engineer
 - b) State Environment Dept.
 - c) State Highway Dept.
 - d) County Hydrologist
 - e) County Fire Marshal
 - f) County Public Works
 - g) Sangre De Cristo Water Co.
 - h) City Wastewater Division
 - i) County Technical Review
 - j) Soil and Water Division
 - k) State Historic Division
2. Final plat to include but not be limited to the following:
- a) Delineate archeological preservation easements.
 - b) Grant roads and trails for public use
 - c) These lots are subject to a fire impact fee at the time of application for a building permit.
 - d) Permits for building construction will not be issued until roads, fire protection and drainage improvements are completed as required by staff.
 - e) These lots are subject to applicable terrain management regulations at the time of application for a building permit.
 - f) Base flood elevations for limits of 100 year flood plain.
 - g) Approval of street names/rural addressing.
 - h) Proposal for zero lot line requires a maintenance easement for adjoining lots.
 - i) Compliance with plat checklist.
3. Final homeowner documents (covenants, by-laws, articles of incorporation, disclosure statement) subject to approval by staff and shall include but not limited to the following:
- a) Water conservation measures, including prohibiting swimming pools.
 - b) Maintenance plan to protect quality roads/drainage facilities.
 - c) A minimum of two on-site parking spaces shall be provided at all times.
 - d) Water restrictions limiting water use to .25 acre-feet per year per lot.
4. Development plan submittals shall include the following:
- a) Address streetlights at appropriate locations in conformance with minimum standards, including the installation of meters..
 - b) Address size, type and height of project signs.
 - c) Delineate clear sight triangles.
 - d) Traffic sign plan.
 - e) Cul-de-sac typical.
 - f) Address recreational facilities within park areas.
 - g) On-street parking shall be limited to one side of the street in areas required

by County Fire Department.

- h) Minimum width of road surface shall be 12 feet for all one-way roads.
 - i) Specify lots that require on-lot drainage ponds.
5. Submit engineers cost estimate and acceptable financial surety to guarantee completion of required improvements (including street and traffic signs, street lights, recreational facilities, common area landscaping, and erosion control). Upon completion, submit a certification from a registered engineer that the improvements have been completed in accordance with the approved development plan submittals.
 6. Submit solid waste fees in accordance with the ESR.
 7. Shall pay fire review fees in the amount of \$1,250.00 in accordance with Resolution No. 2003-47.
 8. Applicant shall pay an inspection fee of \$45,00.
 9. Address pedestrian/equestrian trail alignments in accordance with approved Master Plan as it relates to proposed subdivision phase and areas designated as future phases.
 10. Address southwest road connection as it relates to proposed subdivision phase and areas designated as future phases represented in approved master plan.
 11. Address commitment for a viable grocery store site in accordance with development agreement.
 12. Address variances granted for access and minimum road standards regarding shared driveway off arterial road and finished road grades not exceeding five percent for 100 feet from intersection approach.

CHAIRMAN SULLIVAN: Questions from the Commission? Commissioner Duran.

COMMISSIONER DURAN: Vicki, the affordable units, there are two lots that are less than 2,000 square feet will be affordable units?

MS. LUCERO: Mr. Chair, Commissioner Duran, that's correct.

COMMISSIONER DURAN: And how many of them are there?

CHAIRMAN SULLIVAN: Fifty.

COMMISSIONER DURAN: Fifty lots. How many of the fifty lots will be affordable in addition to these two?

MS. LUCERO: I believe that it would just be those two affordable units. Part of the -- the previous phase actually had 22 affordable units but this phase only proposes two. Mr. Chair, Commissioner Duran, I believe the applicant is correcting me. There will be a total of four.

COMMISSIONER DURAN: Four. And they're getting approval for 50, right?

MS. LUCERO: That's correct.

COMMISSIONER DURAN: And there's no affordable housing requirement? It's just whatever the applicant chooses to provide?

MS. LUCERO: That's correct.

COMMISSIONER DURAN: Thank you.

CHAIRMAN SULLIVAN: Vicki, I had a question. Is the applicant going to build these affordable homes or just sell the lots?

MS. LUCERO: Mr. Chair, I believe that the applicant is proposing to construct these units.

CHAIRMAN SULLIVAN: Okay. Because we've had other situations where we've talked at length about affordable homes but the developer is simply selling lots and I haven't really resolved in my mind how we work that because do they require the lot to be discounted? If we designate certain affordable lots, that means that only those lots can have affordable homes on them in the future, but does that mean the developer still sells them at full price? I don't think we've ever addressed that question, but that's not the issue here. The developer will be selling the lot with the affordable home.

MS. LUCERO: Yes, that's correct.

CHAIRMAN SULLIVAN: Okay. So it looks like about 10 percent, 220 residential lots, 22 affordable housing units, so 10 percent of the subdivision is scheduled to be affordable.

MS. LUCERO: Approximately 10 percent. Maybe a little bit less.

CHAIRMAN SULLIVAN: And why do these two lots need to be less in size and the other two don't?

MS. LUCERO: Mr. Chair, the way that it was designed, these lots turned out to be a little bit shorter than the other lots. It would be possible for them to redesign it and bring it up to 2,000 square feet but that cost would be incurred when they would be selling these units. So the cost would be made up through selling the affordable units.

CHAIRMAN SULLIVAN: Okay. Thank you. Any other questions of staff?

COMMISSIONER DURAN: I'm not real sure that the developer is actually going to be the builder of these. I'm not sure that Mr. Fields is the builder.

CHAIRMAN SULLIVAN: Someone is shaking their head no and Mr. Walbridge is shaking his head yes, so maybe when the applicant gets up here we better clarify that because if that's not the case, we've been dealing at length with Rancho Viejo which is providing some affordable lots and homes. And since is not under the City's HOP program, apparently, then it doesn't fall into that category, I'm wondering if we're not in a gray area here as to what does affordable homes mean? Does it mean affordable lots or affordable houses? It seems like you've got to keep the price of the lot down in order to provide a reasonably priced house. Okay, we'll get that question answered when the applicant comes up. Other questions?

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Montoya.

COMMISSIONER MONTOYA: Regarding the conditions that have been set forth, is the applicant in concurrence and agreement with them?

MS. LUCERO: Mr. Chair, Commissioner Montoya, yes, the applicant I believe is in agreement with all conditions.

CHAIRMAN SULLIVAN: And we've also talked at length about water needs. And we're limiting water use here to .30 acre-feet per dwelling unit. And tell me why these folks need more water than other folks on County subdivision projects?

MS. LUCERO: Mr. Chair, I believe there is a condition, number 3.d, that requires that restrictions of .25 acre-feet per dwelling per lot.

CHAIRMAN SULLIVAN: Okay, I was just looking at the Sangre de Cristo letter so maybe I need to look at the conditions then is what you're saying. Okay. Sangre de Cristo said .3. Okay, got it. .25. All right. Commissioner Montoya.

COMMISSIONER MONTOYA: Vicki, these are to the west of the Relief Route? Is that where this is?

MS. LUCERO: Mr. Chair, Commissioner Montoya, yes. I believe it is west of the Relief Route.

COMMISSIONER MONTOYA: And south of La Tierra, the La Tierra exit.

MS. LUCERO: South of yes, Las Campanas, La Tierra, that area.

COMMISSIONER MONTOYA: Thank you.

CHAIRMAN SULLIVAN: Okay, is the applicant here? Like to have the Clerk swear you in please. She's over here today.

[Duly sworn, Clif Walbridge testified as follows:]

CLIF WALBRIDGE: Clif Walbridge, 1421 Luisa Street, Santa Fe. In a minute I'll have Arthur Fields discuss the affordable housing program.

CHAIRMAN SULLIVAN: Good. Explain that to me.

MR. WALBRIDGE: First, I want to make just one clarification to the staff report. The solid waste is not collected by the City because it's outside the city limits. It's a private scavenger service that collects, as opposed to the City. But we are in agreement with all the conditions. I just want to address two of them. Item number ten asks us to address the time when the southwest road would be built out of Aldea to the west. And Aldea has made a commitment to build that road when 150 lots are sold in phase 2. The other condition is condition 11, which Aldea has agreed to reserve the site for a grocery store prior to recording the plat on this phase.

So I'll let Arthur Fields explain to you how the affordable housing program works.

CHAIRMAN SULLIVAN: Were you at the EZ presentation?

MR. WALBRIDGE: Yes, I was.

CHAIRMAN SULLIVAN: The EZ vote was 3-2. What was the concerns that occasioned that vote?

MR. WALBRIDGE: I'm not sure there was a concern.

CHAIRMAN SULLIVAN: There wasn't any concern? They just didn't like you or what? Okay, well maybe someone else can.

COMMISSIONER DURAN: Is this the EZA?

CHAIRMAN SULLIVAN: EZC I assume. I just wondered what their concerns were. Maybe that can be addressed by someone else.

[Duly sworn, Arthur Fields testified as follows:]

ARTHUR FIELDS: Chairman Sullivan, Commissioners, my name is Arthur Fields. First, on the report there was one other correction if I may, and that is in the summary. It says that there's 100,000 square feet of commercial space. The actual master plan approval was a minimum of 100,000 square feet of commercial space. So I'd just like to make that correction in the record. The affordable housing program worked as follows. When Frijoles Village or now called Aldea de Santa Fe, was approved there was no affordable housing ordinance in the EZ. And we agreed that we would provide five percent affordable housing. We have approvals for 433 residential lots, five percent is 22 lots. We agreed that we would bring them all on in the first phase, and coincidentally the first phase, phase 1-A and phase 1-B together were 220 lots, coincidentally, the 22 lots was ten percent. But the magic figure was the five percent of the 433.

And just to describe that program briefly, there was no standard at the time for what is affordable housing in the EZ. And the condition at master plan approval was that we, the owners, the developers, the 14 families would work with County staff to create an affordable housing standard or program for this specific project. And we did that. And the program was as follows. We decided with the staff and we agreed and it was signed off that we would provide 11 townhouses that would be affordable and we would provide 11 single family lots to be sold at \$30,000 plus an index of increase based on inflation. So we did in fact sell ten lots and we have one more that we will sell to Neighborhood Housing Services. And we sold them for between \$30,000 and \$31,500 per lot. Those are single family lots and the market value of those lots is anywhere from at the minimum, \$75,000 up to probably \$100,000 value for each of those lots. Yes.

COMMISSIONER DURAN: Arthur, excuse me, Mr. Chair. Did all those lots go to Neighborhood Housing?

MR. FIELDS: They did.

COMMISSIONER DURAN: Okay. Thank you.

MR. FIELDS: The commitment was 11 single family lots and 11 townhouses. We have deeded ten of the 11 and we're working with Neighborhood Housing Services to identify the 11 single family lots which will be deeded. We also agreed as part of the agreement with County staff that we would provide 11 affordable townhouses and the agreement was that the townhouses would be 1150 square feet They would have two bedrooms, two bathrooms and they would sell for between \$115,000 and \$119,000. The first group was \$115,000 and the second group was \$119,000.

We in fact contracted for the first group of townhouses. There were four and we as the owners hired a contractor who built the townhouses and four of them have been deeded. In the second phase, phase 1-B, we have an agreement, we sold the townhouse lots to Rick Brenner, who is building the townhouses in phase 1-B. And he assumed our obligation to provide those townhouses. So he is building seven affordable townhouses in phase 1-B and he is selling those to Neighborhood Housing Services for qualified buyers and we're selling them to Neighborhood Housing Services -- excuse me, Rick Brenner is, for \$119,000. That's 1150 square feet and it's two bedrooms, two baths.

That is the extent of the commitment for the affordable housing program for Aldea to date. We have been working with County staff and with City staff to come forward with a new ordinance to increase the density in Aldea whereby we would provide additional affordable housing. The Extraterritorial Zoning Authority voted unanimously about six months ago to request staff to come forward with a new affordable housing ordinance that would increase the densities in Aldea and then we would provide additional affordable housing. Staff at the City has acknowledged in a report that we have a water commitment from the City in the form of a water budget for 476 residential units, which would be the 433 plus an additional 43 units.

So we are working with staff. In fact, we're on the EZC agenda this Thursday evening. But I believe that that will be tabled because there are some bugs in the ordinance that we want to work out with staff and come forward to the EZC with a clean proposal that we all agree on whereby we would produce additional affordable housing. So that's the extent of it and I can answer questions about that but I would also like to share with you why we're requesting a variance for two lots in the phase 2-A.

Oh, one more thing about this application in front of you today. In good faith, we are proposing four affordable units in phase 2-A and there is no requirement for us to come forward with additional affordable housing. We are doing that in good faith anticipation that we will work with County and City staff to come forward with an ordinance to increase our densities to support additional affordable housing. Is that clear?

May I approach you and pass out --

CHAIRMAN SULLIVAN: Let me ask a question before you do that. You mentioned about going before the EZA and coming up with an agreement for 476 units based on the water budget. Now, would that require another letter from Sangre de Cristo? It seems like the Sangre de Cristo water availability letter is for 433 units.

MR. FIELDS: I'm not sure what you're looking at, but there is a water budget.

CHAIRMAN SULLIVAN: I'm looking at the December 10, 1999 letter from Sangre de Cristo Water Company titled "Water availability for Frijoles Village." And it says the development is cited as a 433 residential units and a small commercial area."

MR. FIELDS: Does it also indicate in there, Chairman Sullivan, that there's 131 acre-feet reserved?

CHAIRMAN SULLIVAN: No.

MR. FIELDS: Okay, if you would turn, I believe there's an attachment to that with an actual water budget, and in the water budget it shows 131 acre-feet and that's based on 476 residential units. In fact, City staff has produced a memo to the Extraterritorial Zoning Commission in support of the new ordinance for the affordable housing, to state that the City has indeed committed for the 476 and that the water commitment is not an issue.

CHAIRMAN SULLIVAN: Okay, I'm looking at that on the next page. It does say 131 acre-feet and it says approximately 433 residential units and commercial development, domestic and irrigation demands are in the range of 16 to 20 gallons per minute. A total annual usage at build-out is estimated at 131 acre-feet.

MR. FIELDS: If you would turn to an exhibit. I'm not sure exactly what you're

looking at but there should be another page there which is actually a spreadsheet, a chart showing water usage.

CHAIRMAN SULLIVAN: Okay. Got it.

MR. FIELDS: And if you look at the top right-hand corner I believe you'll see it's based on 476 units.

CHAIRMAN SULLIVAN: Right. I see the 476.

MR. FIELDS: Right. And then it's .22 acre-feet per house, times the 476 and then there's a water budget based on the 476. But the reason why the commitment was only 433 was because of the zoning at the time limited the site to 433 units, and that was the maximum at that time. And it was the intent, with City staff and the County staff at the time that the day would come when we would come forward and ask for additional density in Aldea. And actually, what we're really asking for, we have produced 22 units of affordable housing and there's been no density increase for that. So we're actually asking for credit in this new ordinance that's coming forward for the 22 units that we've already provided. And then we would provide another 21 or so, so we will have provided about 43 units of affordable housing in Aldea, which is ten percent of the final unit count that we hope to have.

And again, the City staff has produced a memo to the Extraterritorial Zoning Commission acknowledging that water is not an issue for the increased densities that we're requesting at this time, through that affordable housing ordinance. And actually, that ordinance is really not on the table today, although some of you obviously are on the EZA and that day will come and hopefully very soon.

CHAIRMAN SULLIVAN: Okay, you have something you'd like to hand out?

MR. FIELDS: Thank you. What I handed out to you is a photograph of some townhouses of phase 1-A of Aldea. As you look at that photograph, it is impossible to pick out the affordable units. There are three unit sizes, 1150 square feet, 1450 square feet, and 1700 square feet. And the beauty with this program is that there's no stigma with the affordable housing. They look great. They look just like the market rate housing. And then the sheets that are attached here are for Rick Brenner's project in phase 1-B. And the reason I handed this out is the first page shows the location of the project, the second page I've highlighted in orange. Those are two lots that are 20 feet wide. These lots are at least 100 feet long so the lots are 2,000 square feet or larger. All right? And then if we turn to the next page, these are elevations that are showing the 1800 unit on each side of an 1100 unit and you can't -- they blend in. And these are 20 feet wide and just for the progression on A-8, the next page, lot 213 is an 1100 unit, and again, that's 20 feet wide. And then the next sheet, on the bottom right corner shows A-1. It's 20 feet wide. This is the floor plan of the affordable townhouse unit.

Now, what's happened -- and by the way, we're really proud of these. These are great. There's a waiting list at Neighborhood Housing Services for these, and we're going to propose in the future that we come forward with many more townhouses, affordable, with this kind of development scenario.

Now, in phase 2-A, which is before you today, there are two lots that we are proposing for affordable townhouse lots. The lots, because of the configuration, cannot be 100 feet long.

They're only about 89 feet long or 92 feet long. They're 20 feet wide by 89 feet long or whatever the actual number is. But the point is the lots are not 100 feet long. And because they're not 100 feet and because the townhouse designed for the affordable program is 20 feet wide, the lots are not 2,000 square feet I would put it to you that that's not a big deal. In the Community College District the minimum lot size is 1500 square feet and those are in the villages. This is a village and there's no real magic number with the 2,000 square foot lot and we're asking for a very minimal easing of the standards to allow us to produce these affordable townhouses at 20 feet wide. If we had to go back and say these lots have to be 23 feet wide in order to have them be a minimum of 2,000 square feet we'd have to go back to the drawing board and redesign the affordable townhouses to fit on a 23-foot wide lot and that would be a very difficult thing to do indeed. So we ask you to work with us on this affordable housing program, and then again, those of you that are on the EZA to work with us when we come in front of you there, to give us the density increase, to credit us with the 22 units we've already provided in density and also to provide future density so we can do more affordable housing.

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN SULLIVAN: Questions? Commissioner Montoya.

COMMISSIONER MONTOYA: Mr. Fields, this is 2-A. How many more --

MR. FIELDS: Commissioner Montoya, as of today, the lot count for residential units is 433.

COMMISSIONER MONTOYA: That have been developed.

MR. FIELDS: No. The master plan approval, the zoning, is 433. Phase 1-A and phase 1-B total 220 residential density units which leads us with 213. And we're here today for 50 lots of the 213.

CHAIRMAN SULLIVAN: Commissioner Montoya, are you finished? Okay, Commissioner Anaya.

COMMISSIONER ANAYA: So that's 50 lots from the 213 and two of them are going to be affordable.

MR. FIELDS: Actually at the time we did this we contemplated the one duplex would also be an affordable, those would be two affordable units. What's before you is ten townhouse lots of which two are affordable and the staff report is incorrect not showing the duplex to also be affordable. So it's our proposal that we would do a duplex that would be affordable. See, at the time we were working with the City and the HOP program recognizes duplex as single family and the City was wanting us to come under the HOP program and at the time that we produced this plat with the engineer we thought we would be doing duplexes. And actually the way it's working out is it's very difficult to try to force the HOP program and standards into Aldea. There are many issues and it's a very complex ordinance and it's very difficult to do that.

COMMISSIONER ANAYA: How many are affordable out of the 50?

MR. FIELDS: Four of them.

COMMISSIONER ANAYA: Thank you, Mr. Chair.

CHAIRMAN SULLIVAN: Other questions for the applicant? Commissioner

Montoya

COMMISSIONER MONTOYA: Mr. Fields, out of the 200 and whatever that are existing, how many of those are affordable housing?

MR. FIELDS: Out of the 220 residential lots that have been platted, 11 townhouses and 11 single family for a total of 22.

COMMISSIONER MONTOYA: And then with the remaining 163, is that where you're looking at an increased density?

MR. FIELDS: Exactly.

COMMISSIONER MONTOYA: How much of an increased density is being thought of?

MR. FIELDS: The terms of the -- what we're thinking, Commissioner Montoya, is that the City water commitment of the 476 would be the maximum that we could have. And so there would be 43 more units. We have 433 approved. We would have 43 more. And the proposal that we are making and working with staff to come forward is that we would get credit for the 22 affordables that we've already produced, an increased density for the 22 that we already produced. And then an additional 21 on top of that. The additional 21 would be 21 more units of affordable housing.

COMMISSIONER MONTOYA: Of the 184 that would be remaining?

MR. FIELDS: Well, no, we're proposing four out of these 50. So there would be 16 more.

COMMISSIONER MONTOYA: Sixteen more.

MR. FIELDS: And if you look at it, and you take 476 and subtract 43 you'd have 433 and ten percent of 433 is 43. So we will have produced ten percent of Aldea as affordable housing. And that's assuming that we get the credit for the 22 units that we've already produced that we would get market rate lots, or increased density which would be market rate lots for the 22 that we've already provided and for which we got no density bonus increase.

COMMISSIONER ANAYA: Mr. Chair, Commissioner.

CHAIRMAN SULLIVAN: Commissioner Anaya.

COMMISSIONER ANAYA: Okay. Just trying to get this straight. You've built 220 homes now.

MR. FIELDS: 220 lots. They're not all homes.

COMMISSIONER ANAYA: Out of the 220, 22 are going to be affordable.

MR. FIELDS: Yes.

COMMISSIONER ANAYA: Then you have 213 left.

MR. FIELDS: Yes.

COMMISSIONER ANAYA: You're asking for approval for 50 lots now.

MR. FIELDS: Yes.

COMMISSIONER ANAYA: 21 of those 50 lots are going to be affordable.

CHAIRMAN SULLIVAN: No. Four.

COMMISSIONER ANAYA: I mean four. Four of the 50.

MR. FIELDS: Right now, there's no obligation to produce affordable housing. We are anticipating a successful --

COMMISSIONER ANAYA: I'm getting to something. So four out of the 50 are affordable. Correct?

MR. FIELDS: Yes.

COMMISSIONER ANAYA: So you add the 22 and the -- where do I get -- I'm getting ten somewhere. Okay, where are you getting the 43 from?

MR. FIELDS: Okay. The water commitment from the City is 476.

COMMISSIONER ANAYA: Okay.

MR. FIELDS: We presently have zoning approval for 433.

COMMISSIONER ANAYA: Right.

MR. FIELDS: The difference is 43.

COMMISSIONER ANAYA: Right.

MR. FIELDS: Okay, we are proposing to come forward with an affordable housing ordinance. Oh, let's go back. 476 is the water budget. 433 zoning. That's a difference of 43. I'm sorry.

COMMISSIONER ANAYA: Right.

MR. FIELDS: So out of the 433, 22 are affordable and we did not get a density bonus for the 22 affordables that we're already doing. So fairness that we're asking for is the density increase for the 22 affordables that we've already produced. So that's 22 on top of the 433. So we're at 433 plus 22 and the 22 would be the density bonus for the 22 units of affordable that we have produced. Then we're saying, on top of that, an additional 21 more units of affordable housing. And of the additional 21, four of those we're proposing for phase 2-A.

COMMISSIONER ANAYA: You want to increase the density to 476.

MR. FIELDS: Yes.

COMMISSIONER ANAYA: But it sounds like to me there's something not right and there should be more affordable housing then. You're trying to squeeze in the affordable housing, which is good, but -- you see where I'm coming from?

MR. FIELDS: The way the City HOP program worked, this is how we started with the City.

CHAIRMAN SULLIVAN: They'd have a total of 43 affordable houses and 476 total.

COMMISSIONER ANAYA: Right.

CHAIRMAN SULLIVAN: So they'd have eight percent or something like that.

COMMISSIONER DURAN: Ten percent would be 47 lots.

CHAIRMAN SULLIVAN: They'd have 43 ultimately.

MR. FIELDS: The way the HOP program works at the City, and if anybody knows otherwise please let me know, is that the 476, if you subtract the 43 units we're proposing for affordable housing there would be 433 market rate and there would be 43 affordable, which is ten percent affordable.

COMMISSIONER DURAN: They do their math differently.

CHAIRMAN SULLIVAN: Yes, they do their math a little different than we do. We divide the numerator by the denominator and they split them upside down.

MR. FIELDS: But it's their water.

COMMISSIONER DURAN: Exactly.

CHAIRMAN SULLIVAN: Well, I think the water belongs to the state of New Mexico. That's an interesting way of coming up with 10 percent but we see where you're math is coming from. We're talking now about this application before the Commission tonight is for 50 units. But I want to be sure that we have a commitment that at least four of those units are affordable, one of which apparently is going to be a duplex. Is that correct?

MR. FIELDS: Our plan is to do two townhouses and one duplex for a total of four units of affordable housing, but we feel that's conditioned on getting the ordinance to allow us to increase our density.

CHAIRMAN SULLIVAN: Okay, now I don't want to condition it. I want to know if you're going to build them or not.

MR. FIELDS: Could you ask your fellow Commissioners to vote for the density increase?

CHAIRMAN SULLIVAN: No. We're not wheeling and dealing here. What we have before us is 50 units of housing and four affordable units doesn't seem to be too many to commit to. Understanding that you've built 22 already.

MR. FIELDS: No, we built --

CHAIRMAN SULLIVAN: You have 22 lots. You've committed to 22 at least, 11 of which have entered the housing program.

MR. FIELDS: We anticipated that before we came before you for plat approval here, that that ordinance would have gone through. It was actually six or seven months ago that the EZA wanted it to come forward.

CHAIRMAN SULLIVAN: Okay, but even if it didn't. You did about 10 percent, roughly on your first phases, 220 units, you did 22. Now you're coming in for 50 units, ten percent would be five units. So you're proposing four and in you're in negotiations with the staff and so forth on density bonuses for the future. My suggestion is if we move this forward now and commit to doing four affordable housing and we don't make it contingent on what might happen in the future, we move forward. How does that sound? Pretty good? Okay.

MR. FIELDS: No, it does, Commissioner. On the 22 units that we've provided we've lost money on every one of them and we got no density increase for it.

CHAIRMAN SULLIVAN: How could you lose money on every one of them? Half of them you've turned over to this other individual.

MR. FIELDS: Because it cost us over \$7 million to create 220 lots and we sold those lots for \$30,000 and \$31,000.

CHAIRMAN SULLIVAN: If you lost money, I can't say you did or didn't. But that's kind of the cost of doing business is the affordable housing and I think what we'd like -- I'd personally like to see and perhaps other Commissioners are not so inclined is when we grant

an approval it's a complete package.

MR. FIELDS: I can show you, Chairman Sullivan, it is 100 percent consistent with the ideology of myself personally and the 14 families in this village to create affordable housing and have socioeconomic integration. It is also our commitment to try to make it economically viable and to keep this thing on a positive path and I can tell you it has been a very expensive thing to create this, and the 22 units we're proud of and hope to do more, but to ask us now to commit to another four that on top of the 22 that we've lost money on, without knowing that we're getting the density increase, I really could not agree to that.

CHAIRMAN SULLIVAN: Well, then why do you need to have a variance? I mean, the variance of for the affordable housing.

MR. FIELDS: It's the unfortunate time frame that we're here for you now before the other ordinance comes in front of you.

CHAIRMAN SULLIVAN: If you're not committing to do four units of affordable housing, then you don't need the variances on the 2,000 square feet lot requirement. Is that right?

MR. FIELDS: Yes, that's correct. But then what will happen is we'll have -- what we wanted to do is produce four of this next group as affordable housing and that's why we came forward with it this way. So I feel like we're negotiating a contract here or something.

CHAIRMAN SULLIVAN: Well, you're asking the Commission for a variance for affordable housing and in return, I'm saying to you that a commitment should be that as a part of this phase you will do four units of affordable housing.

MR. FIELDS: Excuse me. Let me consult with Linda Gardner who's our project manager.

CHAIRMAN SULLIVAN: Sure.

COMMISSIONER DURAN: Mr. Chair, would you mind if we move into the public hearing and just vote on this. If you want to make that motion I would support that.

CHAIRMAN SULLIVAN: Fine. Will this consultation take very long?

MR. FIELDS: No.

CHAIRMAN SULLIVAN: Okay.

MR. FIELDS: All right. Commissioner Sullivan, the two units that we're requesting the variance for, we will make a commitment here tonight in good faith that we will produce those in the affordable housing as we've done in the past. Okay? On good faith and belief that we're going to work with staff and the EZA to give us the density increase. But for here today right now we make that commitment.

CHAIRMAN SULLIVAN: Okay. Well, we're just going to put it as a condition.

MR. FIELDS: We agree to the condition.

CHAIRMAN SULLIVAN: Okay. All right. This is a public hearing. Is there anyone in the audience that would like to speak in favor of or in opposition to the proposal by Aldea for 50 units, of which at the current time, two will be affordable housing? Seeing none, it's back to the Commission. What's the wishes of the Commission?

COMMISSIONER DURAN: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Duran.

COMMISSIONER DURAN: I move for approval of this case with the requirement that there be four affordable housing units out of the 50 proposed, and they could be two lots, a duplex, giving four lots, whatever it takes to build or provide four affordable housing units.

CHAIRMAN SULLIVAN: Okay, and does that motion include approval of the requested variance?

COMMISSIONER DURAN: Yes.

CHAIRMAN SULLIVAN: Okay, is there a second?

COMMISSIONER DURAN: Yes. And staff recommendations.

CHAIRMAN SULLIVAN: And staff recommendations. Okay, is there a second?

COMMISSIONER MONTOYA: Second.

CHAIRMAN SULLIVAN: Second by Commissioner Montoya. Discussion?
Mr. Catanach.

MR. CATANACH: Just a point of clarification that the Commission is requesting that as part of this phase 2-A for 50 lots that four of those be affordable units?

CHAIRMAN SULLIVAN: We're making it a condition.

MR. CATANACH: Right. For purposes of staff monitoring this and enforcing this am I to understand then that this applicant would also have to enter into an affordable housing agreement with Community Housing as they did for the 22 within phase 1?

CHAIRMAN SULLIVAN: I don't think that would be a necessity. They could build it themselves.

MR. CATANACH: Well, certainly, but if the County doesn't have some monitoring that in fact there will be affordable units and they're going to have qualified buyers, then the condition it not going to serve it's purpose.

CHAIRMAN SULLIVAN: What would you recommend? Would it be appropriate to say, in accordance with the procedures established in the prior phases?

MR. CATANACH: That was really the point of clarification, that that's what we did in the first phase. It was required that they enter into an affordable housing agreement with the County and with -- what's the name of the affordable housing?

CHAIRMAN SULLIVAN: Homewise?

COMMISSIONER DURAN: Neighborhood Housing.

MR. CATANACH: Neighborhood Housing. That was how that was -- that the County was able to monitor and ensure that that condition, that the affordable housing was in fact going to happen.

COMMISSIONER DURAN: I'd like to have that as part of my condition.

CHAIRMAN SULLIVAN: Is Homewise the same as Neighborhood Housing?

COMMISSIONER DURAN: That's what I was going to ask?

CHAIRMAN SULLIVAN: Is Homewise, was that formerly?

MR. CATANACH: They changed their name.

COMMISSIONER DURAN: Mike Laughlin. So I would like to add that as my motion.

MR. CATANACH: That would be consistent with what we did with the affordable housing in phase 1.

CHAIRMAN SULLIVAN: Okay, would you restate that language.

MR. CATANACH: The applicant will enter into an affordable housing agreement with the County and Homewise.

CHAIRMAN SULLIVAN: And Homewise, or other entities acceptable to the County.

COMMISSIONER DURAN: Right.

MR. CATANACH: Correct.

CHAIRMAN SULLIVAN: Would that be okay?

MR. CATANACH: It would be.

CHAIRMAN SULLIVAN: In case Homewise gets too busy or something. Okay. There might be another one around town.

COMMISSIONER DURAN: I'll accept that, incorporate that into my motion.

CHAIRMAN SULLIVAN: Okay, incorporate that in the motion. Second, does that sound okay?

COMMISSIONER MONTOYA: Yes.

CHAIRMAN SULLIVAN: Further discussion?

The motion to approve EZ Case #S/V 96-4345 with the above mentioned conditions passed by unanimous [4-0] voice vote.

CHAIRMAN SULLIVAN: Okay, we originally, in the approval of the agenda had moved item 8 up at this point and I don't know if we still want to do that or not. What's the thinking of the Commission? Or do we want to move on to item number 5?

COMMISSIONER DURAN: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Duran.

COMMISSIONER DURAN: My concern is that at the EZA meeting this room was filled with people opposed to it and this evening there are a lot less and I'd hate to move forward on this thing and if it gained approval, I'd hate to be criticized that we moved it forward. I think we should keep it in its sequence so that no matter how this thing goes that there's no question it was done as --

CHAIRMAN SULLIVAN: Would you like to make a motion to amend the agenda to go back to the original sequence?

COMMISSIONER DURAN: I would. That's my motion.

CHAIRMAN SULLIVAN: Okay. There's a motion. Is there a second?

COMMISSIONER ANAYA: Second.

CHAIRMAN SULLIVAN: Motion and second. Discussion?

The motion to return to the original sequence of the agenda passed by unanimous [4-0] voice vote.

XIII. A. 5. EZ CASE # S 03-4760 – Hacienda del Corazon at Las Campanas. C.R. Walbridge, Agent, is Requesting Final Plat and Development Plan Approval for 5 Residential Lots on 7.46 Acres in Accordance with the Previously Approved Master Plan. The Property is Located Off of Las Campanas Drive, at the Intersection of Trailhead Drive and Clubhouse Drive, within Section 11, Township 17 North, Range 8 East (Commission District 2)

MS. LUCERO: Thank you, Mr. Chair. C.R. Walbridge, agent for Las Campanas Limited Partnership requests preliminary and final plat and development plan approval for a five-lot subdivision on 7.46 acres in accordance with the previously approved master plan. The property is located off of Las Campanas drive, at the intersection of Trailhead Drive and Clubhouse Drive, within Section 11, Township 17 North, Range 8 East, Five-mile EZ District.

On October 9, 2003 the EZC recommended approval subject to County staff conditions. In 1992 the BCC granted master plan approval for 1,419 residential lots to be developed in phases, two golf courses with club complexes, tennis and equestrian center and related accessory facilities on 3,549 acres. The 14 subdivision phases as listed in the staff report have been granted final approval by the BCC. The applicant is now requesting preliminary and final plat approval for a five-lot subdivision adjacent to Club Casitas. Lots will range in size from 1.02 acres to 1.50 acres. A guesthouse is proposed on each lot.

Recommendation: The proposed subdivision phase is in conformance with the approved master plan, the Extraterritorial Subdivision Regulations and the County Land Development Code. Staff's recommendation and the decision of the EZC was to recommend approval of the request for preliminary and final plat and development plan approval subject to the following conditions. Mr. Chair, may I enter the conditions into the record?

[The conditions are as follows:]

1. Compliance with applicable review comments from the following:
 - a) State Engineer.
 - b) State Environment Dept.
 - c) State Highway Dept.
 - d) Soil and Water District.
 - e) Santa Fe County Water Co.
 - f) County Hydrologist.

- g) County Development Review Director.
- h) County Fire Marshal.
- i) County Public Works Dept.
2. Final plat to include but not be limited to the following:
 - a. Compliance with plat checklist.
 - b. Approval of rural address and street names.
3. Final homeowner documents (covenants, by-laws, articles of incorporation, disclosure statement) subject to approval by staff and shall include but not limited to the following:
 - a. Update property report to include Hacienda del Corazon subdivision phase.
 - b. Update property report regarding number of lots for the various subdivision phases, and number of residential units occupied or under construction.
 - c. Submit County disclosure statement item.
 - d. Water Restrictions shall be .40 acre-feet per lot.
 - e. Water conservation measures shall include water storage for roof drainage and irrigation of non-native grass shall only be done with water storage from roof drainage, and non-native grass shall not exceed 800 square feet.
4. Remaining balance of density as approved for Las Campanas master plan shall be established at 174 lots/units, this includes The Estancias pending final recording, and does not include guesthouses, which are based on available water rights. This balance may increase to 182 subject to verification and agreement with staff.
5. Development Plan shall include the following:
 - a. Signage plan
 - b. Detail for turn-around
 - c. Road profile for finished road grade
6. Submit solid waste fee in accordance with subdivision regulations and submit fire review/inspection fees in accordance with Resolution No. 2003-47.
7. Submit engineer's cost estimate and acceptable financial surety for completion of required improvements as approved by staff. Upon completion, submit certification by registered engineer that improvements have been completed in conformance with approved development plans.
8. Submit updated water rights schedule.
9. Applicant shall pay an inspection fee of \$45.00.
10. Applicant shall pay fire review fees in the amount of \$125,00 in accordance with Resolution No. 2003-47.

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Montoya.

COMMISSIONER MONTOYA: Vicki, are the conditions that are being set forth in agreement with the applicant?

MS. LUCERO: Mr. Chair, Commissioner Montoya, I believe the applicant

is in agreement with all of staff's conditions.

CHAIRMAN SULLIVAN: Any other questions for staff? I have a question for Mr. Wust, our hydrologist. As a part of the packet, there's a letter from the State Engineer that is a little bit confusing to me. In the letter it says, "In the opinion of this office it would be inappropriate to offer any opinion of the subdivider's water supply proposal. Las Campanas is proposing to add five lots to their Type II residential subdivision..." And then it goes on to say where they're located and that they're being supplied by the Buckman wells and at a later date, a new diversion facility via the City of Santa Fe, Las Campanas and Las Campanas Water Cooperative, and they go on to talk about the County Code and the County entering into an agreement with Las Campanas for a bond, which it agrees the subdivider has the ability to provide his subdivision with domestic water for 100 years. While the County was willing to do this, the plan does not comply with County regulations or state law. It is due to this arrangement that this office feels it's inappropriate to offer any opinion. Further discussion is found in the attached letter from Brian Wilson dated October 19, 200, which is not in the packet.

Could you provide some clarification on that?

STEPHEN WUST (County Hydrologist): Mr. Chair, first off I'll say this is not a packet that was given to me to review, so I don't have a historical basis. But I can tell you I've had a discussion with Patrick Romero of the State Engineer's Office on this issue, so I could speak to that if you would like.

CHAIRMAN SULLIVAN: Please.

MR. WUST: Basically, he presents, he brings forward the opinion from his office and I don't know if it's the opinion of the State Engineer but it's the opinion of this group in the office, that they believe the San Juan/Chama project will not provide the water availability in the future that the County and the City are suggesting it will, and therefore he feels he cannot address County or City commitments to developments that may rely on that water in the future. And that's why he says he does not want to put forth an opinion on that and that it does not follow the state law and the Code, because it cannot be proven that the San Juan/Chama project will be delivering the water that is predicted.

CHAIRMAN SULLIVAN: When does their lease run out with Albuquerque?

MR. WUST: The project lease?

CHAIRMAN SULLIVAN: The water lease with Albuquerque? 2013, doesn't it?

MR. WUST: I'm not sure how it is with Albuquerque, Mr. Chair.

CHAIRMAN SULLIVAN: Okay. So your understanding of this letter is that they don't want to offer an opinion because the San Juan/Chama may not provide, for whatever hydrologic reasons and legal reasons enough water that everyone's hoping for, i.e., a 100-year supply.

MR. WUST: Mr. Chair, Mr. Romero has told me that he does not want to issue an opinion for any development that relies on that water.

CHAIRMAN SULLIVAN: Okay. So we can take that however we want

then, is what you're telling us. Okay. Do you have an opinion as our hydrologist?

MR. WUST: Mr. Chair, on the project itself?

CHAIRMAN SULLIVAN: On the project and on whether it would have a 100-year supply. That's putting you on the spot but we need some guidance on this.

MR. WUST: Mr. Chair, as a water availability as part of a conjunctive use plan, which my understanding is that's what the future holds for us, such as during drier we have fall-back positions to wells, sources either within the county or in conjunction with the City. It will supply it because over the course of the long term the water availability will rise and fall, but has shown a fairly good consistency. So in that case, yes it would. Whether, I do not believe we could guarantee year to year that it will give us some kind of specific amount but I think as part of a conjunctive use plan, the project is viable.

CHAIRMAN SULLIVAN: Does Las Campanas have a conjunctive use plan?

MR. WUST: Mr. Chair, I do not know the answer to that.

CHAIRMAN SULLIVAN: Their supply comes all from the Buckman wells, doesn't it, and potential San Juan/Chama diversion?

MR. WUST: At the moment, yes. The County Utility is developing it.

CHAIRMAN SULLIVAN: Right. I understand that's something that we're working towards. Okay. That's it for the State Engineer letter then I guess. Other questions of staff? If not, is the applicant present?

[Previously sworn, Clif Walbridge testified as follows:]

MR. WALBRIDGE: Mr. Chair, members of the Commission, my name is Clif Walbridge. I'm representing Las Campanas. Las Campanas is in favor of all the conditions except for one item in the list of conditions, and that's item 3.b that relates to the water restrictions of .4 acre-feet per lot. They'd like you to reconsider and all them to use the .5 for a couple of reasons. Most of the lots in Las Campanas that have houses and guesthouses have been allocated .5 acre-feet. Las Campanas has purchased water rights, main stem water rights on the Rio Grande that would allow .5 acre-feet. They have enough water rights for .5 when they have a house with a house and a guesthouse.

County Code has been requiring .5 acre-feet when you have a house and a guesthouse and they also plan on following all the -- they have water conservation covenants that they have in their restrictive CC&Rs regarding water harvesting and they plan on following whatever County ordinances there are for water harvesting. So we'd like you to consider whether or not you can allow them to have .5.

CHAIRMAN SULLIVAN: Mr. Walbridge, didn't I read in here that only two of the lots are proposed for guesthouses?

MR. WALBRIDGE: No, I think they're all proposed for guesthouses.

CHAIRMAN SULLIVAN: All of them? I guess that was something else I was reading.

COMMISSIONER DURAN: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Duran.

COMMISSIONER DURAN: Clif, rather than increase the water, how about if we change it to allow guesthouses on these lots? I know in the past what we've done out in that area when we've had to consider increasing the water allocation, we've allowed guesthouses provided that they're not for rent, that they're strictly for guest purposes. And I think that .4 acre-feet should be sufficient and that the reason you want to take it to .5 is just to meet the Code. Why don't we just say allow you to have guesthouses on this and keep the restriction at .4. Wouldn't that accomplish the same thing?

MR. WALBRIDGE: I think it's a philosophical thing, that so many of the lots out there have .5 acre-feet and they've purchased the water rights and are going to have a delivery system for it. But I guess they're asking you to consider doing .5.

COMMISSIONER DURAN: Thank you, Mr. Chair.

CHAIRMAN SULLIVAN: But we've also seen the State Engineer's letter who's not totally convinced that although you've purchased the water rights that the actual water will be there in 100 years. So wherever we can conserve. These are somewhat smaller lots than typical Las Campanas lots, aren't they?

MR. WALBRIDGE: There are some lots that are one acre in size on some of the other projects. Then there are some that are two and 2.5 acres.

CHAIRMAN SULLIVAN: It seems the .4 is -- now, is that a current limitation that's within your covenants that the guesthouses cannot be rented?

MR. WALBRIDGE: I'm not familiar with the covenants. I think from previous discussions that the covenants do say that.

CHAIRMAN SULLIVAN: But that doesn't say that in our current conditions, Commissioner Duran, I don't think. Okay. Any other questions of the applicant? If not, this is a public hearing. Is there anyone who would like to speak in favor of or in opposition to the application? Seeing none, we're back to the Commission for discussion and a motion. What would you all like to do here?

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Anaya.

COMMISSIONER ANAYA: I think we did put together a water harvesting ordinance. And if they were to follow with the .5 acre-feet, if they were to get the .5 acre-feet for each lot and follow the water conservation ordinance that we put out, wouldn't that -- we're already going through steps for conserving water so I don't see a problem with that.

CHAIRMAN SULLIVAN: I think if they follow the water harvesting ordinance, they would maybe need less than .5 or less than .4. Are they subject, Joe, to the water harvesting ordinance?

MR. CATANACH: Mr. Chair, yes, they are subject to the ordinance, and it's addressed in condition 3.e. That the water conservation measures shall include water storage from roof drainage.

COMMISSIONER DURAN: What number? 3.e. Okay.

CHAIRMAN SULLIVAN: Okay, and Commissioner Anaya, your point was

that -- tell me again. Your point was that you're okay with the .5 acre-feet.

COMMISSIONER ANAYA: Yes. I'm okay with the .5. I guess what I'm getting at is being fair. We've put this .5 on everybody else.

CHAIRMAN SULLIVAN: Well, in Las Campanas but not everywhere else in other subdivisions. Other subdivisions have had less with guesthouses.

COMMISSIONER ANAYA: But we've got the water conservation measures included in this so I'm okay with the .5 as long as they agree to 3.e, which they are.

CHAIRMAN SULLIVAN: Okay. Other comments?

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Montoya.

COMMISSIONER MONTOYA: Why was the .4 recommended if we've gone with .5 on all the other subdivisions?

MS. LUCERO: Mr. Chair, Commissioner Montoya, the last phase of Las Campanas that was brought before you, the Estancias, that discussion came up and there were some lots that had guesthouses and I believe that condition was actually imposed by the BCC, that they restrict the lots with guesthouses to .4 acre-feet and I believe the reason behind that was because guesthouses, that's basically what they are. They shouldn't be permanent, full-time dwelling units therefore not needing the full .25 acre-feet.

COMMISSIONER MONTOYA: So that was with both of the Estancias or the last one.

MS. LUCERO: The last phase.

COMMISSIONER MONTOYA: The last phase. Do you recall when that was, Vicki?

MS. LUCERO: I believe it was probably sometime maybe back in August.

COMMISSIONER MONTOYA: August.

COMMISSIONER ANAYA: And I don't believe we had the ordinance in place.

COMMISSIONER MONTOYA: I see. So you're saying everything has been .5 up to that point then.

MS. LUCERO: Mr. Chair, Commissioner Montoya, I believe that was the first subdivision that got limited further than .5 acre-feet.

CHAIRMAN SULLIVAN: That was 128 lots.

COMMISSIONER MONTOYA: Yet the applicant is allowed up to .5 acre-feet.

MS. LUCERO: Mr. Chair, Commissioner Montoya, I believe that that's the water rights that they've purchased, were calculated at .5 acre-feet per lot.

COMMISSIONER MONTOYA: I'm just trying to get clear here. The reason we're going with .4 on these conditions is to be consistent with what was done with the Estancias.

MS. LUCERO: That's correct.

CHAIRMAN SULLIVAN: And based on the theory that if a full-time residence utilizes a quarter acre-foot, then a part time guesthouse wouldn't need a quarter acre-foot. .15

should be more than enough, and in fact Rancho Viejo has been saying that their usage, their actual computed usage is .15. I haven't seen the figures on it but that's what they say for full-time usage at Rancho Viejo. Those units are typically somewhat smaller but we've gotten into this discussion, do larger units necessarily mean more interior water usage? Two people in a 5,000 square foot house tend to use as much as two people in a 2,000 square foot house. So it seemed, as I recall, reasonable. Any other -- Commissioner Montoya. Other questions of staff? We're back, we already went through the public hearing. We're through with public hearing. You missed the best part.

COMMISSIONER DURAN: I want to make a motion then.

CHAIRMAN SULLIVAN: Go right ahead.

COMMISSIONER DURAN: Well, I've been here almost seven years and I've had to make some philosophical adjustments in this seven years based on our water issues. So I'd like to make a motion that we approve the subdivision with the conditions as presented by staff, which is the .4 acre-feet, for reasons that we've already discussed.

CHAIRMAN SULLIVAN: There's a motion, is there a second? I'll second the motion. Discussion?

The motion to approve EZ Case #S 03-4760 passed by majority [3-1] voice vote with Commissioner Anaya casting the nay vote.

XIII. A. 6. CDRC CASE # MIS 01-5012 – Santa Fe Downs Reconsideration of Conditions. Pojoaque Pueblo Development Corporation Requests the Reconsideration and Clarification of Conditions that were Imposed on the Previously Approved Master Plan for the Santa Fe Downs, Which Requires the Applicant to Submit a Manure Removal Plan within 2 Years of Master Plan Approval, as Well as to Install a Monitoring Well to Monitor the Effects the Manure Pile May Have on Ground Water. The Property is Located Southwest of the Intersection of I-25 and SR 599, (Downs at Santa Fe), within Sections 26 & 27, Township 16 North, Range 8 East (Commission District 3)

MS. LUCERO: Thank you, Mr. Chair. Pojoaque Pueblo Development Corporation requests a reconsideration and clarification of conditions that were imposed on the previously approved master plan for the Santa Fe downs, which requires the applicant to submit a manure removal plan within two years of master plan approval, as well as to install a monitoring well to monitor the effects the manure pile may have on ground water. The property is located southwest of the intersection of I-25 and SR 599, (Downs at Santa Fe), within Sections 26 & 27, Township 16 North, Range 8 East, Commission District 3.

On October 1, 2003 the LCDRC met and acted on this case. The decision of the

LCDRC was to recommend approval of the request subject to amended conditions. On August 13, 2001, the BCC granted master plan zoning approval to allow for recreational and non-residential uses at the Downs at Santa Fe on 321 acres subject to the conditions stated in the follow up letter in Exhibit E. The applicant is requesting consideration and clarification of two of these previously approved conditions. The first condition, number four, requires the applicant to submit details for the removal of new and old manure including any trash within the manure piles with a preliminary development plan or within six months. All manure and unpermitted trash on the site, including the area adjacent to Por Su Gracia Subdivision to be removed within two years of master plan approval and prior to phase 2 development plan submittals.

Half of the manure shall be removed in the first year. Any extension of this time frame shall be reviewed by the BCC and if the applicant shows reasonable cause to extend the time frame. The applicant state that over the past few years they have considered numerous proposals to identify a global manure removal plan. However, they have been unsuccessful in developing a plan that removes all the waste within two years that satisfies any of these environmental requirements and that is commercially viable for the applicant.

Between the years 2000 and 2003 PPDC has removed approximately 81,340 cubic yards of manure. PPDC estimates that there is less than 80,000 cubic yards of waste remaining on the site. PPDC wishes to continue removing the waste in the same manner until all the waste has been removed. They estimate that the entire stockpile will be removed within four years, and therefore are requesting that the condition allow them to continue the manure removal process as they have been and allow them until August of 2007 to remove all of the manure.

The County Fire Marshal has review this request and states that a fire and entrapment hazard still exists and should be fully abated prior to any development. The Fire Marshal recommends that if the time extension for the removal is granted, PPDC should be required to further isolate and deny entry into the area of the manure pile either by fencing, patrols or a combination of both. The Fire Marshal also recommends that the Pueblo further confirm their full time presence at the site and inform these personnel on the proper methods to report an emergency.

The second condition at issue requires the applicant to install a monitoring well to monitor effects from the manure pile, a plan for the location and installation of the well shall be submitted to the approved by the County Hydrologist prior to installation. The well shall be installed within ninety days of master plan approval. Monitoring results shall be submitted to the County Hydrologist by March 1, June 1, September 1, and December 1 of each year.

When the BCC heard this case the applicants failed to communicate that there was an existing monitoring well on the property within 275 feet of the manure stockpile. They have been sampling the well since it was installed in 1988. Quarterly reports from August 2001 to the present have been submitted for review. The County Hydrologist has reviewed the location of the monitoring well and the reports that have been submitted. The

Hydrologist recommends that an additional monitoring well be required to monitor effects of the manure pile on shallow groundwater.

The applicant is requesting modification to allow them to utilize the existing monitoring well.

Recommendation: The original approval by the BCC allowed the applicants two years to remove all of the manure from the site. The applicants have represented that they removed more than half of the manure within three years. They are requesting that the BCC grant them an extension of an additional four years to remove the remaining manure. According to the Fire Marshal, the fire and entrapment hazard from the manure piles still exists and should be fully abated prior to any development. There is an existing monitoring well on the property. The applicants maintain that this satisfies condition no. 26 of the master plan approval and that the condition should be modified to allow them to utilize the existing well.

The County Hydrologist has reviewed the location of the existing monitoring well and the reports that have been submitted. The Hydrologist recommends that a new well be installed to monitor shallow groundwater. The Hydrologist would also require that the applicants conduct soil sampling and submit the reports for review and approval. Staff has reviewed this application and recommends that the applicants be given no more than two years to remove the remaining manure from the site. Based on staff's review and comments from the County Hydrologist and County Fire Marshal staff's recommendation and the decision of the LCDRC was to recommend approval of the request for clarification and reconsideration of the previously approved conditions with the conditions to be amended as follows. Mr. Chair, would you like me to read the conditions?

CHAIRMAN SULLIVAN: Yes.

MS. LUCERO: Condition number 4. All manure and unpermitted trash on the site, including the area adjacent to Por Su Gracia Subdivision, must be removed within 2 years of the BCC's approval of the manure removal plan and prior to Phase 1 Development Plan submittal. If the timeframe is not complied with, then the zoning on this property will become null and void. A silt fence shall be installed along the riverbank within 30 days of the approval, to mitigate erosion. The applicant shall submit a cost estimate and financial guarantee, to be approved by the County Land Use Department, for removal of all manure and unpermitted trash prior to this facility re-opening, as approved by staff. PPDC is required to further isolate and deny entry into the area of the manure piles either by fencing, patrols or a combination of both and further confirm their full time presence at the site and inform those personnel on the proper methods to report an emergency.

Condition number 26 will be modified as follows: A new monitoring well shall be installed within 60 days of this approval in a location and design approved by the County Hydrologist to monitor the effects of the manure pile on shallow groundwater. The well shall be monitored on a quarterly basis for nitrate as nitrogen total Kjeldahl nitrogen, chloride and total dissolved solids. Monitoring results shall be submitted to the County

Hydrologist by January 30, April 30, July 31, and October 31 of each year. The County Hydrologist shall be notified five days prior to each groundwater sampling event so as the County can participate in the sampling if it chooses. In the events that monitoring shows that ground water is contaminated above State standards, the County will contact the Environment Department for enforcement. Ground water monitoring shall continue for two years after removal of all manure from the site. In addition to water monitoring the applicants must also develop an appropriate soil sampling program acceptable to the County and NMED and submit reports to the County as required.

LCDRC also imposed on additional condition and that is that the applicant must submit a status update report to the LCDRC in one year to assess and re-evaluate progress of conditions. Thank you, Mr. Chair.

CHAIRMAN SULLIVAN: Okay, questions for staff?

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Montoya.

COMMISSIONER MONTOYA: Vicki, is this the recommendation the LCDRC came up with, that you're bringing to us?

MS. LUCERO: Mr. Chair, Commissioner Montoya, staff did make a recommendation. The LCDRC concurred and made a few minor modifications, but this is what the LCDRC recommended.

COMMISSIONER MONTOYA: Okay. Regarding the condition 26, having the shallow groundwater well, number one, what is the cost going to be to do something like that?

MS. LUCERO: Mr. Chair, Commissioner Montoya, I don't know that I have the answer to that question. Maybe the County Hydrologist might have some input to that.

CHAIRMAN SULLIVAN: Do you know about the estimated cost of a shallow monitoring well?

MR. WUST: Mr. Chair, Commissioner Montoya, a well's been drilled, so I think we can probably get a pretty accurate cost. That would be my preference. They could probably tell us what it's cost them so far.

CHAIRMAN SULLIVAN: You mean that one that's there now.

COMMISSIONER MONTOYA: The existing well that's been there since 1980?

MR. WUST: No, a well was drilled just recently.

CHAIRMAN SULLIVAN: Oh, just recently.

MR. WUST: Yes. To fulfill this requirement.

COMMISSIONER DURAN: They've already drilled the well.

CHAIRMAN SULLIVAN: Then why are they asking us to remove the requirement?

MR. WUST: My understanding, Mr. Chair, is that a well was drilled and I was told it failed. I'm not quite sure that means. That's all I got. Whether a second well was drilled or not, I think we can ask them tonight. I guess my main tenet was since a well was drilled, we can probably get a cost estimate from that. Because it was drilled on a high piece of ground so

I'm not sure how deep they had to go to reach water.

COMMISSIONER MONTOYA: Okay, so I guess then this follow-up question. What is shallow groundwater? What's a shallow groundwater well? What's considered shallow?

MR. WUST: Mr. Chair, Commissioner Montoya, I believe it was about 150 feet. 118.

COMMISSIONER MONTOYA: 118 is considered shallow groundwater.

MR. WUST: From where they drilled the well, which again was a high portion of ground.

COMMISSIONER MONTOYA: Okay. I guess I'm getting a little confused. We're putting a condition that they drill a shallow --

COMMISSIONER DURAN: Do you want to know what the cost was?

COMMISSIONER MONTOYA: Yes, I asked that, and then I also want to know what the definition is of a shallow groundwater well.

MR. WUST: Mr. Chair, Commissioner Montoya, basically, it's the first water, the first aquifer.

COMMISSIONER MONTOYA: Oh, okay. So it could be ten feet, it could be 1000 feet.

MR. WUST: That's correct.

COMMISSIONER DURAN: He just said it was 118.

COMMISSIONER MONTOYA: Yes. Before they hit it.

COMMISSIONER DURAN: I think it's less than \$5,000. That's my expert opinion.

CHAIRMAN SULLIVAN: Well, the size of the casing for a monitoring well is usually only, what? Two inches, inch and three-quarters.

MR. WUST: Mr. Chair, sometimes it can one inch. One inch or two inches, generally are the two standard sizes. And if I was coming up with an estimate it would be even less than what Commissioner Duran said. But I'm going to defer to what the actual cost was.

CHAIRMAN SULLIVAN: Right. So it doesn't have to be a 6-5/8 inch casing.

MR. WUST: PVC is fairly cheap. The completion process is less than, say, a domestic well.

COMMISSIONER MONTOYA: Okay. And then the other condition that's being added on number four is that a silt fence be installed along the river bank to mitigate erosion. What's that going to be protecting, or protecting from becoming eroded?

MS. LUCERO: Mr. Chair, Commissioner Montoya, that would be to protect, as they're moving around the manure, from it flowing into the river. So that would hold that back from it flowing into the Santa Fe River.

COMMISSIONER MONTOYA: Is that a running river? Or an arroyo?

CHAIRMAN SULLIVAN: I saw it run once.

COMMISSIONER MONTOYA: After it rained.

CHAIRMAN SULLIVAN: No after they released from the Canyon Reservoir.

MR. WUST: Mr. Chair, Commissioner Montoya, it was basically prevention

for any runoff from the property to the drainage along the La Cienega drainage. So the silt fence was a requirement to prevent any runoff of contaminated material from the property to off the property.

COMMISSIONER MONTOYA: Okay. Is this a new condition?

MS. LUCERO: Mr. Chair, Commissioner Montoya, this is a new condition that we've just added.

COMMISSIONER MONTOYA: Okay. And Vicki, my last question, what is the unpermitted trash that's out there?

MS. LUCERO: Mr. Chair, Commissioner Montoya, there is a lot of trash mixed in with the manure. As I understand there used to be a landfill there before hand. I'm not sure if it's from that or just waste from the Downs facility, but there is some mixed in with the manure piles so that would be included as part of the removals.

COMMISSIONER MONTOYA: So it's part of the existing piles of manure.

MS. LUCERO: That's correct.

CHAIRMAN SULLIVAN: Medical waste, like disposable items from the veterinarians, syringes and medical items.

COMMISSIONER MONTOYA: Okay. Thank you.

COMMISSIONER DURAN: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Duran.

COMMISSIONER DURAN: Vicki, all this came up several years ago when we granted this -- this is not new information, you've discovered new things that have happened out there. This is old information. Correct?

MS. LUCERO: Mr. Chair, Commissioner Duran, yes, it is manure piles, all that was brought up.

COMMISSIONER DURAN: It's the same manure piles that we discussed years ago.

MS. LUCERO: Yes, that's correct.

COMMISSIONER DURAN: So what they're really doing is asking for a little bit of time to get the manure out of there. So staff has decided to add these other requirements for what reason?

MS. LUCERO: Mr. Chair, Commissioner Duran, originally they had two years to remove all of this. And now they're requesting another extension and staff now --

COMMISSIONER DURAN: So is the monitoring well going to do something for us that we needed -- that we find that we needed the past two years that we didn't get? I don't understand why we're --

CHAIRMAN SULLIVAN: That was in the original condition, the monitoring well.

COMMISSIONER DURAN: The monitoring well was?

CHAIRMAN SULLIVAN: Yes, that's not new. They're asking us to remove that condition. That was in the original condition.

COMMISSIONER DURAN: So they never --

CHAIRMAN SULLIVAN: They never did it. Or apparently they drilled something, I'm just hearing, and it didn't work. We need to find out some more.

COMMISSIONER DURAN: So there's no new conditions.

CHAIRMAN SULLIVAN: The silt fence is new.

COMMISSIONER DURAN: But there's no new conditions that have occurred out there from the last time we heard this.

MS. LUCERO: Mr. Chair, Commissioner Duran, there are no new conditions that have occurred on the site. There are additional conditions as you mentioned, the fence --

COMMISSIONER DURAN: Right. Extenuating conditions that have happened on the site.

MS. LUCERO: That's correct.

COMMISSIONER DURAN: Thank you, Mr. Chair.

CHAIRMAN SULLIVAN: Okay, other questions of staff? I just want to make a clarification that you mentioned that the applicant failed to communicate that there was another well out there. I was fully aware that there was an existing well out there. When I was on site there was an existing monitoring well I believe that comes from an old part of the landfill that they closed under Environment Department guidelines. That's near the existing piles of manure. That was closed. It's fenced. It has a monitoring well and it's all related to that closure of that facility, and I think they're still probably required to monitor it as a result of the closure of that facility. So I saw it that day. I knew what that was but I think the monitoring well the Commission required two years ago was a separate one pertaining to any residual effects from the manure piles. That's at least my understanding. My recollection.

COMMISSIONER DURAN: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Duran.

COMMISSIONER DURAN: My only concern is that we're going to spend an hour here hashing over information that we went over two years ago. It doesn't seem to me that there's even anyone out there opposed to this. And I just think to save some time here that you should limit the presentation and maybe find out if there's even anyone out there opposed to this before we spend two hours discussing it.

CHAIRMAN SULLIVAN: Okay. Let's have the applicant come forward and tell us if you don't agree with these conditions, these two modified conditions, why not?

[Duly sworn, Alan Mosley testified as follows:]

ALAN MOSLEY: My name is Alan Mosley. Again, the Pueblo, as we know, approached us two years ago with the Commission for a master plan and there were several conditions that were put on the master plan. At that time the Pueblo made the determination that until these conditions could be met, we weren't going to open the Downs for any economic benefit until we could meet these conditions.

I think by not opening it, the county is losing out on a lot of employment opportunities and also some tax opportunities. But we've made that decision to meet the conditions if we are going to open it. These conditions were significant and we've made efforts which Mr. Lazarus will describe what we've done on the manure to remove that. As far as the staff

recommendation, one thing that there is in there a letter, a statement in there that we did not meet the two years required by NMED to remove the manure. NMED has never had a requirement of time frame on removing the manure. That requirement was a Commission requirement that they put on.

The monitoring well. There was -- there is currently, when we came to the Commission last time, three monitoring wells on the property. There are two that are at the landfill and there is another monitoring well that is adjacent to the landfill. When this condition came up I talked to staff at that time and they indicated there was some confusion and maybe there wasn't notice and the Commission did not understand this monitoring well was there. Since that time, NMED has required another monitoring well be put in also, which matches the Commission's requirement. That well was started about a month ago. They've run into problems hitting rocks. It will be completed, I understand, within the next week, hopefully. At that time a sample will be made of that and again, Mr. Lazarus group can explain what they're doing on that.

So that monitoring well is in place. It will be monitored and those results will be sent to NMED and the County will have access to all those as they do not to all the requirements the NMED has placed on us with monitoring wells.

A couple other issues with the staff requirements that we're not comfortable with. One of them is the financial guarantee. I think we've made significant efforts in cleaning up this manure and as the Commission knows, before the Commission ever acquired this property, nobody had made any efforts to clean that up. And the Pueblo actually started cleaning this up about a year and half prior to actually coming to this Commission with a master plan. So we have made efforts to clean that up and again, Mr. Lazarus can show you what we have done out there.

A couple statements that were made as far as the trash in the manure, there is trash in the manure which we are finding, separating as we haul it off and hauling that to the dump. The medical waste issue that keeps coming up, we have found no medical waste. There are syringes, but syringes are also used in the horse industry as far as not necessarily giving shots. They use them to inject down the throat, vitamins, things like that. So we have found no medical waste. I've done investigations to see if medical waste was ever dumped there and can find that is not true. There has never been medical waste put on that property.

The silt fence, we're not sure what the requirements, why the requirements for a silt fence when again, the manure has been there for 20 years. It's not required. We looked at a silt fence. We're still not sure from County staff where that fence is supposed to go and we have asked that direction be given on that and we haven't received that as of yet.

And you asked why the monitoring well is still on there. We submitted this in July, so this is basically the same request that was sent to the Commission, I believe in July. That monitoring well was not, we're requesting that that not be done at that time. After talking with NMED, they felt that another monitoring well high up on the property would be a benefit, so per their request we will drill that other monitoring well. But it is still on the -- I guess we're requesting that that condition be removed because it's already taken care of. I think that's it. Any questions? I'd be happy to answer.

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN SULLIVAN: Questions for Mr. Mosley? Commissioner

Montoya.

COMMISSIONER MONTOYA: Mr. Mosley, regarding the map we were just given [Exhibit 2] the monitoring well that's being drilled now is where?

MR. MOSLEY: Mr. Chair, Commissioner Montoya, the monitoring well -- Jay, maybe you could point to it.

COMMISSIONER MONTOYA: Oh, so it's actually right in the --

MR. MOSLEY: Up in the top corner of the manure pile, that area.

CHAIRMAN SULLIVAN: Number three.

COMMISSIONER MONTOYA: Is it number 3? It's below number 3. It will actually be the fourth one then.

MR. MOSLEY: And that location was determined by NMED and I believe that it went through the County Hydrologist to verify that they were happy with it too.

COMMISSIONER MONTOYA: Regarding the future use that you indicated that potentially we're using revenues, gross receipts, that sort of thing. What are some of the projected future uses of this site?

MR. MOSLEY: Well, in the master plan that we submitted and which was approved with the conditions, it included both an entertainment facility. It included the possibility of opening the track back up, a racetrack facility, it included a restaurant. It included a gold driving range, amphitheater in the infield for concert events. Those were I believe the primary activities.

COMMISSIONER MONTOYA: Okay.

CHAIRMAN SULLIVAN: Mr. Mosley, what are you seeing, I see monitoring well number 3, which I thought was the one you were drilling and I'm glad Commissioner Montoya cleared that up. Apparently, the Environment Department asked you to put another one in because it looks like on your graph here you're getting up over 9 mg/l in the nitrogen. It looks like -- and then I see you installed a plastic liner in your effluent holding pond, I assume to remedy that. What are you seeing, what are you testing for, other than nitrates in your monitoring wells?

MR. MOSLEY: Mr. Chair, if I could, I would like to defer that to Mr. Lazarus who is the expert in that field.

CHAIRMAN SULLIVAN: Okay. Any other questions of Mr. Mosley? Okay, Mr. Lazarus.

[Duly sworn, Jay Lazarus testified as follows:]

JAY LAZARUS: My name is Jay Lazarus. I'm president and senior geo-hydrologist of Glorieta GeoScience, 1723 Second Street, Santa Fe. I'm going to start with discussing the manure removal and then we'll get on to the monitoring wells.

CHAIRMAN SULLIVAN: Could you answer my question first? What are you testing for in the monitoring wells, particularly in number 3?

MR. LAZARUS: Nitrates, nitrites, total Kjeldahl nitrogen, total dissolved

solids.

CHAIRMAN SULLIVAN: Okay. But not for DOD or for organic wastes or anything of that sort?

MR. LAZARUS: Mr. Chair, that is not a requirement of our discharge permit so we're not sampling for it. Those are analytes that are more typically required when you're sampling discharge from a municipal sewage treatment plan that is discharging into a live river.

CHAIRMAN SULLIVAN: The reason I'm asking is I'm wondering if it's acceptable for us to consider these wells that you have drilled or that you're about to complete drilling through the rock, I think the concern over the material in the stockpile might be that there was contamination in the water that was organic contamination, similar to the typical water system testing that would be done. Would it be much more difficult to test for that as well?

MR. LAZARUS: It would be inappropriate, Mr. Chair.

CHAIRMAN SULLIVAN: Inappropriate. Why would it be inappropriate?

MR. LAZARUS: Because we're not looking at trying to keep a stream alive for aquatic species. We're looking at monitoring groundwater to look at potential impact of leaching from the manure piles.

CHAIRMAN SULLIVAN: Okay, the nitrogen obviously is a concern, but isn't fecal coliform a concern, as an indicator of bacteriological contamination?

MR. LAZARUS: This is not being drilled. These wells are not being sampled to determine whether the water is fit for human consumption, like one would sample a public water supply system. These are being sampled to determine whether or not any leaching from the manure piles has occurred and impacted groundwater.

CHAIRMAN SULLIVAN: But if you took a baseline and then you could determine if a baseline in another area, then you could determine what your fecal coliform level was and chances are it would be less than -- it would be zero.

COMMISSIONER DURAN: Point of order, Mr. Chair. Would you mind having this technical discussion with the applicant at another time? He obviously has done what we have asked him to do or what is required of him and I'm happy that you know all these details, but I find that it's inappropriate. Why don't we let the applicant finish his presentation to us and if you want to --

CHAIRMAN SULLIVAN: He's responding. We'll let him do that, Commissioner, but he's responding to my question and I'm trying to get to an end of it and my question was what he's sampling for and I think he's answered that.

COMMISSIONER DURAN: I think he has too.

CHAIRMAN SULLIVAN: But he's only sampling for nitrogen and the other items that you mentioned. So why don't you go ahead and tell us about the other removal issues?

MR. LAZARUS: Okay.

COMMISSIONER DURAN: Thank you, Mr. Chair.

CHAIRMAN SULLIVAN: Not at all.

MR. LAZARUS: What we've got here is an aerial photograph and some cross sections and some volumetric bar graphs here. I'll start with the aerial photography. What we're showing here in yellow, and I believe all of you have a copy of this in a smaller version, the yellow area was the extent of the old manure piles in the year 2000. And as Mr. Mosley stated before, none of the previous owners of the property had removed any manure and Pojoaque started removing the manure even before we got master plan approval.

Since 2000, we've removed the equivalent volume of this area in yellow, in both these areas here, leaving this remaining area that's depicted in orange, and I believe that is all on the handout that we gave you. You can look here in a generalized cross section here, the old stockpile and compost area have been significantly reduced in volume. Once again, the yellow shows the old stockpile area. The orange shows where it is today in 2003. Looking at the volumes of the manure and the compost, our estimate in the year 2000 was that there were approximately 200,000 yards of manure remaining at the facility and approximately 60,000 yards of compost at the facility, for a total of approximately 260,000 yards.

In the last three years, we've removed 140,000 yards of manure and approximately 40,000 yards of composted material, for a total of 180,000 yards. And I believe that's a typo in the staff report where it says 81,000 yards. It would actually be 180,000 yards. And I believe that Pojoaque has done a really good job of trying to get after getting rid of this manure and the compost as evidenced by the significant reduction in volumes, in the actual manure and compost piles. As Chairman Sullivan pointed out, on the monitoring well adjacent to the lagoon where we receive effluent water from the City, that lagoon was concrete-lined, it had some cracks in it. We cleaned it out and we lined it with plastic and as Commissioner Sullivan accurately pointed out, the concentration of nitrate in that monitoring well has dropped significantly since that time. To clarify a point in the staff report where they said that we hadn't informed the County of the monitoring wells on the property, the previous County Hydrologist had been out there with my staff sampling these wells, to split samples with the County, Environment Department and Pojoaque. So the County was fully aware of all the wells that were on the property.

The one well located adjacent to the effluent holding pond and the two wells that were required for closure of the landfill that was on the property at the time. In terms of the constituents that we monitor, as I said before, we monitor nitrate, total Kjeldahl nitrogen, nitrite, total dissolved solids. We are monitoring these in compliance with the conditions of approval of our discharge permit. Our company does the compliance reporting for approximately 18 dairies in New Mexico for their groundwater discharge permits and we generate a lot of manure at those dairies and the constituents that we analyze for at the Downs are the exact same constituents that the New Mexico Environment Department requires us to monitor at the dairy. So there's a direct correlation as to what we're monitoring here and what we're being required to monitor at areas that are actively producing manure.

We've been really monitoring wells since it's been required by the Environment Department as part of our discharge permit over the last couple of weeks. We've been using hollow-stem auger techniques. We've collected soil samples in the upper zones, using split

spoon samplers. We've encountered boulders and very large cobbles at depths of about 68 to 85 feet in the well, making it really difficult to complete the well with the hollow-stem augers. The requirement for the Environment Department is for us to complete the well with ten feet of screen above the water table and ten feet of screen below the water table. We initially encountered water at 108 feet. The total depth of the well was 118 feet. During completion of the well, and we had to try it a couple times because of the boulders and the drilling technique we're using.

We selected the hollow-stem auger technique specifically so we know exactly where the water is and there'd be no guesswork. As we pulled the augers out and back-filled the well with the appropriate sand and bentonite seals, the boulders are caving in on us and we're having a tough time completing this well. We've just had discussions with the Environment Department. We're going to come back. If we know exactly where the water is from the hollow-stem auger drilling, we're going to come back and complete the well using mud rotary, which should be able to help us keep the hole open and keep the boulders stabilized for us to get the proper sand pack in, completion in. And Mark Lesch of our staff here will discuss a little bit of the soil sampling with you if you don't have any questions for me right now.

CHAIRMAN SULLIVAN: Questions for Mr. Lazarus? No? Okay.

[Duly sworn, Mark Lesch testified as follows:]

MARK LESCH: My name is Mark Lesch with Glorieta GeoScience. As Mr. Lazarus was explaining, upon drilling the monitoring well, our attempts in the past three weeks, we've taken soil samples with a split spoon method inside the hollow auger. We sampled down to ten feet and we just got these samples back today so they are preliminary. We sampled down to ten feet, as I was saying. For the first two feet we got a value of 7.6 parts per million nitrate. For the remaining four samples down to ten feet, everything was below one part per million nitrate. Those are the values we got back today and again, those are preliminary and we are still awaiting the official values.

CHAIRMAN SULLIVAN: Commissioner Anaya, a question?

COMMISSIONER ANAYA: Mr. Chair, I'm a little confused. You're giving me samples of which well? Not the well you're trying to drill.

MR. LESCH: These are soil samples from the initial attempt to install the monitoring well that's going in there now.

COMMISSIONER ANAYA: This is from you're collecting while you're drilling.

MR. LESCH: Correct.

COMMISSIONER ANAYA: Okay. Thank you, Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Duran.

COMMISSIONER DURAN: So are those nitrate levels acceptable?

MR. LESCH: Yes.

COMMISSIONER DURAN: At what level are they not acceptable?

MR. LAZARUS: Mr. Chair, Commissioner Duran, there's no Environment Department for nitrate in soil. There are standards for nitrate in groundwater, but as Mr. Lesch

was saying, once we get down to the ten-foot level, there's zero nitrate at ten feet. Depth of the water is 108 feet.

COMMISSIONER DURAN: What you're basically saying is the nitrate contamination doesn't exist below ten feet?

MR. LAZARUS: Elevated concentrations don't exist, I'd say below two feet.

COMMISSIONER DURAN: Two feet. So this is a surface issue that we're dealing with.

MR. LAZARUS: Right. So there's no -- based on these soil samples there's no leaching of the nitrates through the soil towards groundwater. And especially verified by this 0.7 parts per million at ten feet.

COMMISSIONER DURAN: Okay. Thank you.

CHAIRMAN SULLIVAN: Ten milligrams per liter is the point where you're required to make remediation. Blue baby syndrome can occur. They haven't hit ten here. They were up to nine on their effluent well. Commissioner Montoya.

COMMISSIONER MONTOYA: Mr. Lazarus, these samples are being taken from where? Right where the old stockpile was?

MR. LESCH: Mr. Chair, Commissioner Montoya, the soil samples?

COMMISSIONER MONTOYA: Yes.

MR. LESCH: The soil samples are being taken from the well that's being installed at this location here in the old manure stockpile.

COMMISSIONER MONTOYA: Okay.

CHAIRMAN SULLIVAN: Is that kind of right above the word "old" in our drawing? Where it says "old stockpile"?

MR. LAZARUS: Mr. Chair, above and to the left.

CHAIRMAN SULLIVAN: Above and to the left. Near the orange area, which are still part of the stockpile that remains.

MR. LAZARUS: Yes, sir.

CHAIRMAN SULLIVAN: Okay. So you're drilling right in the stockpile that remains.

MR. LAZARUS: Correct. Or right at the edge of it.

CHAIRMAN SULLIVAN: Right at the edge. Okay. And I had a question on the removals. It sounds like you've gotten a lot out of there. One of the major contracts I guess you had initially was with a company that got 40,000 yards out of there, and then you went, I guess, to smaller contractors. Or you looked at larger contracts and they weren't economically feasible and then you went to smaller contractors who came in and took materials out for landscaping and so forth. Are you going to be doing any -- the remaining, is that just going to be people coming in that want to get free manure for their gardens or what's the plan that you envision for that?

MR. MOSLEY: Mr. Chair, I think I can address that. We do have a contract right now with a company who is hauling it off. We estimate he'll haul off about probably 20,000 cubic yards this year. Currently he's hauling it to part of the 284/85 highway project for

the site for erosion control. It's being put on there. What we've done, every contract we've entered into to haul it off had to have a place going. We send out to NMED so they know where it's going and hopefully it has a useful purpose. It's gone to the cement plant in Albuquerque for ground reclamation. So instead of just hauling it off and piling it up somewhere else we're hauling it off to where it's going to be utilized.

CHAIRMAN SULLIVAN: Okay, so your future efforts are going to continue in that vein, not to simply just come and get it type of thing.

MR. MOSLEY: Well, people can come and get it off if they want to, and we haul it off to people locally, but the majority -- doing that will take forever to get it off.

CHAIRMAN SULLIVAN: That's what I was getting at.

MR. MOSLEY: Right now we estimate that based upon our history on finding places to put it that we can get rid of about 20,000 cubic yards over the next four years. If we can find a contractor to make it faster we can do that but right now that's our experience.

CHAIRMAN SULLIVAN: Okay, and then getting down -- let me then get to these two conditions that the local development review committee has recommended. As I understand it, with regard to number 26, you're already installing a monitoring well and you're having some trouble with it but you're going to go back and do it with the rotary drill and that well is smack dab in the middle of the old stockpile area. So that would seem to comply with the original requirements for a monitoring well. So do you have any problems then with condition 26 as it's currently written?

MR. MOSLEY: The condition on the --

CHAIRMAN SULLIVAN: The monitoring well being installed within 60 days of approval.

MR. MOSLEY: Oh, Mr. Chair, no. That is being done as we speak.

CHAIRMAN SULLIVAN: The item 4, the revised condition 4 gave you an additional two years but also required the installation of a silt fence, which is one of those, I assume plastic things that you see along the highways and so forth. And you had a concern that you didn't know quite where you wanted that and you didn't know why it was needed. So am I to understand that you're okay with condition 4, with the exception of the silt fence. Take a look at condition 4.

MR. MOSLEY: Let me take a look. Make sure I understand before I say yes.

COMMISSIONER MONTROYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Montoya.

COMMISSIONER MONTROYA: If I may suggest, I was taking notes and if I took him correctly he had issue with the two-year time frame, with the silt fence and with the submission of a cost estimate and the financial guarantee.

CHAIRMAN SULLIVAN: Oh, the financial guarantee. That's right. That was the other one. No we know they asked for four years, but it sounds like if they've already moved 160,000 cubic yards as they indicate, and their estimate is 200,000 cubic yards, that they're well within a two-year time frame, given that the current rate of removal.

MR. MOSLEY: Based on our estimates that we -- Mr. Lazarus just went out

and did some current estimates and it was around 80,000 cubic yards left when we made this application. Based on the contracts that we feel we have in place now and the history, it looks like about 20,000 per year. We did have a company that came in and hauled a substantial amount off early on. We haven't found anybody that can do that now. We're looking at 20,000, that's why the four years. I would hate to say we could do in two years and come back in two years and say we still have 40,000 that we haven't been able to get rid of. We think that in a four-year time period, we honestly can meet that time frame.

CHAIRMAN SULLIVAN: And was there a financial guarantee, staff, in the original conditions? And was that ever supplied?

[Mr. Catanach makes inaudible remarks away from the microphone.]

CHAIRMAN SULLIVAN: As long as they proceed on whatever period of time that's decided on here and don't reopen the facility then no financial guarantee is required. Do you have any intention of opening up, Mr. Mosley?

MR. MOSLEY: Mr. Chair, we have some problems with that language on the guarantee. We have used the facility for activities in the past couple years, a lot of them for youth activities, soccer, football. We just feel that a financial guarantee based upon what we have done and what our plans are, we would like that financial guarantee taken off. Would we - - there is a possibility that something could come up and we would come to this Commission and to the staff and say we could like a special permit to do this event. Right now we cannot do that with a guarantee on there.

CHAIRMAN SULLIVAN: The activities you've been doing the past have been by special permit.

MR. MOSLEY: Yes, they have.

CHAIRMAN SULLIVAN: Okay. We're down now to -- we're okay on 26. We're okay on number 4 except as Commissioner Montoya pointed out, we have three items that you have concerns with. The two-years versus four, the financial guarantee and the silt fence. Is that right?

MR. MOSLEY: There is one other, Mr. Chair.

CHAIRMAN SULLIVAN: Uh oh. There's not time for that.

MR. MOSLEY: There is in here on staff recommendation that we coordinate all monitoring with the County Hydrologist and notify him before. We currently do that with NMED and what we'd like to do is continue monitoring the wells and communicating with NMED and provide copies of all results to the County Hydrologist. That way we are not trying to work with two different departments. We work with one and provide the results to --

CHAIRMAN SULLIVAN: Is that a problem, Mr. Wust?

MR. WUST: Mr. Chair, it's not a problem if it's done correctly. And the reason I say that is I heard earlier Mr. Mosley say they would be glad to provide results to the Environment Department and certainly those would be available to the County but what we ask is that we get a copy of those. The other request is we get a phone call with them saying they're going to sample on this date so in case someone from the County wanted to attend, he could. So if it's cleared before the fact instead of after the fact and if Mr. Mosley agrees with that I'm

fine with that.

CHAIRMAN SULLIVAN: Is that a problem Mr. Mosley?

MR. MOSLEY: Mr. Chair, I think as a courtesy I think we would definitely be able to work with the County Hydrologist.

CHAIRMAN SULLIVAN: A phone call and a copy of the reports is what he's asking.

MR. MOSLEY: Not a problem.

CHAIRMAN SULLIVAN: Okay, so that's not an issue. So we're back to three.

COMMISSIONER DURAN: Can we move to the public hearing?

CHAIRMAN SULLIVAN: We're going to try. Is there anything else you'd like to present to the Commission?

MR. LAZARUS: Mr. Chair, there's only one thing we'd like to add to that and that would be that when we've removed all the manure that our requirements to sample and notify the County end as such, be terminated when all the manure is removed and we'll just operate under our groundwater discharge permit.

CHAIRMAN SULLIVAN: They've asked that your monitoring well continue for two years afterwards.

MR. LAZARUS: We understand that. Our groundwater discharge permit requires us, once a facility is closed, your groundwater discharge permit requires you to perform two years of post operational monitoring also. So we're doing that for the state anyway.

CHAIRMAN SULLIVAN: You do that anyway. Okay. So I don't see any difference there. You just don't want to contact the County after that, is that it?

MR. LAZARUS: We don't want to have the potential for a breakdown in communication after the manure's been removed.

CHAIRMAN SULLIVAN: I see.

MR. LAZARUS: At that point we believe the County's concerns have been met.

CHAIRMAN SULLIVAN: Okay. I think we understand your requests. This is a public hearing. Is there anyone who would like to offer any comments with regard to the proposed revisions to the conditions of the master plan approval for the Downs at Santa Fe? Yes, sir.

[Duly sworn, George Rivera testified as follows:]

GEORGE RIVERA: My name is George Rivera. I'm the Lt. Governor for the Pueblo of Pojoaque. I want to thank the Commissioners tonight for being here and taking extra time out of your families' time and everything to take care of the needed things. Our issue with the Downs is one of many issues that I deal with. I run the Pueblo and have been Lt. Governor there for, it will be 12 years in January. But I've dealt with the County on many, many issues and I'm glad to say that we have a good working relationship and that many of the issues regarding roads and right-of-ways and the need to deliver services to the people in Santa Fe

County that are within our jurisdiction. We certainly work with the County well on that.

Our request here tonight is basically a government to government acknowledgement. The tribe has shown, the Pueblo of Pojoaque has shown that we are committed to removing the manure before the master plan was submitted, before it was a recommendation by anybody, we determined that we wanted to remove it. We've been doing that. We got lucky when we removed a big batch all at once. Our request for four years is a realistic request that we're looking at. We don't want to have to come back and say we didn't get it done. We want to come back and say it's gone.

We would like to see some activities take place at the Downs. The philosophy of putting a financial guarantee on the reopening is cumbersome to the tribe and it's not something we ask the County for when they come ask us from something that they need to get done in the Pueblo. We don't ask for a financial guarantee. We know the County's not going anywhere, just like you know we're not going anywhere. And our intent is to provide some jobs and some revenue to come out of that facility. Right now, nothing has happened to that facility. I believe that when we closed it, several hundred jobs were lost and many tax dollars were lost to the County.

We can start to rebuild that but I think that you need to allow us to not just only spend money on before we can even get it open. We need to invest some money into a business there or into some concerts or some other kind of entertainment that can make some new tax dollars for you and some employment for you. I don't see us making a whole bunch of money at that facility but it would be nice to use it and see it not just sit there. So with all due respect, I ask for your consideration that our request versus some of the staff recommendations, that our requests are accepted. I stand open for questions. Thank you.

CHAIRMAN SULLIVAN: Thank you, Governor. Questions for Governor Rivera?

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Montoya.

COMMISSIONER MONTOYA: Lt. Governor, regarding the recommendation or the condition that staff has that it be done within two years. What if we added something about must be removed within two years of the BCC's approval of the manure removal plan and subject to an extension for one two-year period.

LT. GOV. RIVERA: If that works for you, that works for me. That way it's not, you didn't get it done in two years. And we want it out of there too. So that would work for us.

COMMISSIONER MONTOYA: Okay. And then the cost estimate and financial guarantee and the silt fence. What are your --

LT. GOV. RIVERA: I don't have that --

COMMISSIONER MONTOYA: The conditions on the cost estimate and the financial guarantee. That's still something you think should be removed in terms of the conditions?

LT. GOV. RIVERA: I believe that the financial guarantee is not a courtesy that should be put on. As far as a cost estimate, we have numerous cost estimates depending on

which one you look at. I'm assuming the cost estimate is for removal.

COMMISSIONER MONTOYA: Yes, for the removal of all manure and unpermitted trash prior to this facility --

LT. GOV. RIVERA: And I believe we have submitted those to County staff. I think that some of those are on file with the staff.

COMMISSIONER MONTOYA: Where do you stand on that condition, then?

LT. GOV. RIVERA: To remove what's left?

COMMISSIONER MONTOYA: No, to leave or remove that language.

LT. GOV. RIVERA: I think we would like that removed, that language.

COMMISSIONER MONTOYA: And what about the silt fence? You don't need to remove it since it's not there.

LT. GOV. RIVERA: The silt fence, the only concern I have there is just confusion on our part on exactly what that entails. I mean, a silt fence, what area? It is 100 yards or?

COMMISSIONER MONTOYA: So because of a lack of clarity in terms of where it's going to go and where it should be, without any real direction from staff, you think we should remove that then?

LT. GOV. RIVERA: I would have no problem with that and if you feel like we were getting erosion that's been created in the last few years we would look at doing something on our own.

COMMISSIONER MONTOYA: Okay. Thank you.

CHAIRMAN SULLIVAN: Further questions?

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Anaya.

COMMISSIONER ANAYA: I think the main reason, thank you Governor for coming over. The main reason for all these conditions is to protect the residents in the village of La Cienega. The silt fence is to protect the runoff when it does rain, if we ever do get rain, to protect the arroyos from the manure getting into it. The financial guarantee was to protect, again, the residents of La Cienega, to make sure things were done, along with the monitoring wells.

I think that I could agree with Commissioner Montoya on -- if you could restate that, Commissioner. You said a two-year with a possible extension of one or two years?

COMMISSIONER MONTOYA: For one two-year period.

COMMISSIONER ANAYA: I know that you all are trying to clean that up and it's just, that's my district and I have to answer to those constituents. And if we could give and take, I would give on that if we would look at possible location of a silt fence where needed. I don't want you to just put it up for no reason.

LT. GOV. RIVERA: Yes, we could work with you on that.

COMMISSIONER ANAYA: Okay. And I do agree with our County Hydrologist, Steve Wust, that he needs to be notified and continued to be notified after it's all cleaned up, so that we're not running around looking for paperwork. We get it. So those are

my comments, Mr. Chair.

CHAIRMAN SULLIVAN: Thank you, Commissioner. Other comments, questions for the Governor? And we do appreciate, Governor, your coming and the working relationship that we've had with the Pueblo on a number of issues as you've indicated. It's very helpful.

COMMISSIONER ANAYA: And Mr. Chair, if I could add. The reason that I asked this body to send it back to La Cienega Development Review Committee is because they live there and I wanted them to look at it and look at it closely. And I know you all have been trying to remove that manure and we want to try to work together. So let's get it out of there.

CHAIRMAN SULLIVAN: Would you like to give us a motion, Commissioner Anaya.

COMMISSIONER DURAN: Point of order, Mr. Chair. I'm not sure that -- the Lt. Governor came up and spoke but I'm not sure you made certain that there wasn't anyone else that wanted to speak.

CHAIRMAN SULLIVAN: Okay, I'll try. He was the only one that I saw. Is there anyone else who would like to speak in favor of or in opposition to this plan?

COMMISSIONER DURAN: Thank you, Mr. Chair.

CHAIRMAN SULLIVAN: We don't want to miss anyone. Okay, then Commissioner Anaya or Commissioner Montoya, did you want to make a motion with regard to some modifications of these staff conditions, or how would you like to do it?

COMMISSIONER MONTOYA: Mr. Chair, I'll attempt it here.

CHAIRMAN SULLIVAN: Okay. Go for it.

COMMISSIONER MONTOYA: We state on the second sentence of number 4 on the conditions, [All manure and unpermitted trash on the site, including the area adjacent to Por Su Gracia Subdivision, must be removed] within two years of the BCC's approval of the manure removal plan and subject to extension for one two-year period prior to Phase 1 Development Plan submittal. [If the timeframe is not complied with, then the zoning on this property will become null and void.] A silt fence shall be installed along the riverbank upon determining the site and staff approval, and staff approval meaning both County and tribal staff within 30 days of the approval, to mitigate erosion.

CHAIRMAN SULLIVAN: How about staff concurrence. Mutual staff concurrence. So they both would agree that that's the location that the silt fence would be appropriate.

COMMISSIONER MONTOYA: Yes.

CHAIRMAN SULLIVAN: Does that sound all right?

COMMISSIONER MONTOYA: Sure. And then I would just suggest that we eliminate at this point that whole sentence that talks about a cost estimate and financial guarantee.

CHAIRMAN SULLIVAN: Starting with the words, "The applicant..."

COMMISSIONER MONTOYA: Yes, starting with the words "The applicant...all the way down to "approved by staff." And then the only other addition

would be on number 26, where NMED, basically, what we would be asking for is that we get the copies from NMED to our County Hydrologist and notification to our County Hydrologist when the testing will be done.

CHAIRMAN SULLIVAN: Okay, that will be an additional clarification in item 26. What about the additional condition, Commissioner, that's been proposed. The applicant must submit a status update to the LCDRC. It seems to me that that should come to the BCC rather than the LCDRC, in one year to assess and re-evaluate progress. Are you including that in your motion?

COMMISSIONER MONTOYA: Mr. Chair, that is on the last page?

CHAIRMAN SULLIVAN: Yes, on page 5.

COMMISSIONER MONTOYA: Oh, yes. Yes.

CHAIRMAN SULLIVAN: My suggestion is make that the BCC. We'll make it available to the LCDRC.

COMMISSIONER MONTOYA: Yes.

COMMISSIONER ANAYA: Could it go to both?

COMMISSIONER MONTOYA: BCC and LCDRC? Sure.

CHAIRMAN SULLIVAN: Sure. Okay, to both the LCDRC and the BCC.

COMMISSIONER MONTOYA: Maybe we could just do it, ask LCDRC to come --

CHAIRMAN SULLIVAN: How about rather than putting that burden on the applicant, how about we just say to the County and then we can make it available to whoever we want. See what I'm saying?

COMMISSIONER MONTOYA: Yes.

CHAIRMAN SULLIVAN: One-stop shopping.

COMMISSIONER DURAN: Land Use Administrator.

COMMISSIONER MONTOYA: To the Land Use Administrator.

CHAIRMAN SULLIVAN: Okay, Land Use Administrator. Got it. Okay.

So you're recommending, this is a motion recommending the extension with those revised conditions 4, 26, and the additional condition.

COMMISSIONER MONTOYA: Yes.

CHAIRMAN SULLIVAN: Do I have a second?

COMMISSIONER ANAYA: Second.

CHAIRMAN SULLIVAN: Second to the motion. Further discussion?

The motion to approve CDRC Case #MIS 01-5012 passed by unanimous [4-0] voice vote.

CHAIRMAN SULLIVAN: Thank you, gentlemen.

XIII. A. 8. EZ CASE # S 03-4770 – High Summit III Subdivision. High Summit Corp. Ralph Brutsche, Applicant, Karl Sommer, Agent, Request Final Development Plan and Plat Approval for a Residential Subdivision Consisting of 105 Lots with 107 Dwelling Units on 150 Acres, and a Single Tract (Tract “K”) Consisting of 342.3 Acres in the MSR. This Request also Includes the Following Variances of the Extraterritorial Subdivision Regulations: To Allow Two Cul-de-sac with Lengths Greater than 1,000 Feet and to Allow the Replacement of Standard Curb & Gutter with Stone. The Property is Located Off Hyde Park Road (State Road 475), Southeast of the Summit Subdivision within Sections 15, 16, 21 and 22, Township 17 North, Range 10 East (Commission District 1)

MS. LUCERO: On November 13, 2003, the EZC met and acted on this case. The decision of the EZC was to recommend approval of the request. The current property consists of 496.2 acres located partially in the Mountain Special Review District. The portion of the property located outside of the MSR is approximately 150 acres. The applicant is proposing a lot-line adjustment between the proposed High Summit III Subdivision and the adjacent subdivisions known as “South Summit” and “High Summit,” which are also owned by Ralph Brutsche.

“The applicant is requesting preliminary and final plat and development plan approval for a subdivision consisting of a vacant tract of which two will be allowed guesthouses for a total of 107 dwelling units. The subdivision will be developed in nine phases. The first phase is 23 lots and is estimated to be complete by the fall of 2004. Thereafter, one phase will be constructed each year.

A portion of the property is located in the Basin Fringe Hydrologic Zone where the minimum lot size is 12.5 acres. The applicant is proposing to utilize City water, therefore, the minimum lot size would go down to 2.5 acres per dwelling unit which would allow 60 dwelling units. The remainder of the property is located within the Mountain Hydrologic Zone.

The applicant is proposing to utilize the density bonus option in the EZO, which allows an increase in the percentage of the number of dwelling units or lots allowed by the underlying zoning.

In the staff report it states that they’re proposing to use a 60 percent open space density bonus. The applicants have recalculated the number to use the 45 percent density bonus option and that was one of the handouts that I just handed out. [Exhibit 3] They still meet density under the 45 percent open space bonus.

Variances: The applicant’s request also includes four variances; a variance of Section 3.5.6 of the ESR to allow stone in lieu of standard curb and gutter, a variance of Section 3.5.2.F.2.b.2 of the ESR to allow two cul-de-sacs with lengths greater than 1,000 feet, a variance of Section 12.C.1.b.2 of the EZO to allow disturbance of 30 percent

slopes, and a variance of Section 12.C.1.C.2 of the EZO to allow more than 50 percent of 70 structures to be built on 20 percent to 30 percent slopes. The applicant has addressed the variance review criteria in Exhibit E.

Recommendation: The applicant is requesting two variances of the Extraterritorial Subdivision Regulations. The Fire Marshal does not have an issue with the variance for the cul-de-sac length, provided that certain standards are met. As far as the variance to allow stone rather than curb and gutter, stone was used in the adjacent subdivisions and does not appear to pose any problems.

This proposal is in conformance with all other requirements of the Extraterritorial Zoning Ordinance and Subdivision Regulations. Staff's recommendation and the decision of the EZC was to recommend approval of the requested variances, with preliminary and final development plan and plat approval for a 107-lot residential development subject to the following conditions. Mr. Chair, may I enter the conditions into the record?

[The conditions are as follows:]

1. All redline comments must be addressed.
2. Preliminary and final development plan and plat with appropriate signatures must be recorded with the County Clerk.
3. The grading and drainage plan must be signed and sealed by a Professional Engineer.
4. Road names and addresses must be approved by Rural Addressing.
5. Protective easements must be established around the two significant archeological sites unless the State Historic Preservation Office approves a mitigation/treatment plan. Dedication of protective easements with metes and bounds must be shown on final plat.
6. Water use will be restricted to 0.25 acre feet per dwelling per year. Water restrictive covenants must be recorded with the final plat. A water meter must be installed for each dwelling unit and annual readings must be submitted to the County Hydrologist by December 31st of each year.
7. The standard County water restrictions, final homeowner's documents, and disclosure statement must be recorded with the final plat.
8. All utilities must be underground.
9. A detailed signage plan must be submitted for review and approval prior to final plat recordation.
10. The applicant must submit solid waste fees as required by the subdivision regulations.
11. All lots are subject to the Santa Fe County Fire and Rescue Impact Fees. This must be clearly noted on the final plat.
12. The applicant must submit an engineer's cost estimate and financial guarantee for all required improvements (i.e. road construction, street and traffic signs, fire protection, etc.). A schedule of compliance projecting time period for completion of improvements must be included. Upon completion, the applicant must submit a certification by a registered professional engineer that improvements have been completed according to the approved development plan.

13. Compliance with applicable review comments from the following:
- a) State Engineer's Office
 - b) State Environment Department
 - c) Soil & Water District
 - d) State Highway Department
 - e) County Hydrologist
 - f) Development Review Director
 - g) County Fire Marshal
 - h) County Public Works
 - i) County Technical Review Division
 - j) State Historic Preservation Office
14. The following note must be put on the plat: *Permits for building construction will not be issued until required improvements for roads, drainage, and fire protection have been completed as required by staff.*

MS. LUCERO: Thank you. I also just wanted to mention that I handed out as well a letter of opposition for this project. [Exhibit 4]

COMMISSIONER DURAN: Mr. Chair.

CHAIRMAN SULLIVAN: Questions of Ms. Lucero. Commissioner Duran.

COMMISSIONER DURAN: Vicki, your recommendation says that the Extraterritorial Zoning -- I'm sorry. It was staff's recommendation and the decision of the EZC to recommend approval of the requested variances. You make no mention that the EZA approved this.

MS. LUCERO: Mr. Chair, Commissioner Duran, this case did go before the EZA last week and the EZA acted on the master plan request and two other variances. So this is separate from what the EZA acted on last week.

COMMISSIONER DURAN: This is separate from what the EZA acted on?

MS. LUCERO: The EZA granted, was acting on the master plan request, and that was approved. The BCC is now taking action on the plat request.

COMMISSIONER DURAN: On the plat request. Do you have -- I'll save this for later if I need to. Thank you.

CHAIRMAN SULLIVAN: Vicki, could you explain that to me? Why are we not just also doing the master plan approval?

MS. LUCERO: Mr. Chair, because this project is in the Two-mile EZ District so the EZA has authority over master plans in that area. So they have the final decision on the master plan request. And now the BCC has the final authority to approve or disapprove the plat.

CHAIRMAN SULLIVAN: Okay, so you say in your letter that it's coming to the BCC for master plan, preliminary and final development plan approval and plat approval, but it's really not coming for master plan approval.

MS. LUCERO: Mr. Chair, you're correct. The statement under the issue reads

wrong. It shouldn't include master plan.

CHAIRMAN SULLIVAN: Okay. So final, preliminary, everything's coming in one bunch here. Preliminary final and plat approval. So the staff is comfortable that all the details are worked out down the nth degree and we're ready for plat approval.

MS. LUCERO: Mr. Chair, that's correct.

CHAIRMAN SULLIVAN: Okay. You said there were two variances, but you mentioned also the slope variances. The variances for disturbance of 30 percent slopes. Are we not also, is that not also a part of the process?

MS. LUCERO: Mr. Chair, there were two variances that were granted by the EZA as part of the master plan approval. That was to allow more than 50 percent of structures to be locate on 20 to 30 percent slopes, and disturbance of 30 percent slopes for road construction and building construction. Those requirements were taken out of the Extraterritorial Zoning Ordinance, and that's why those variances went before the EZA. The variances that are before you tonight are variances to the Extraterritorial Subdivision Regulations.

CHAIRMAN SULLIVAN: Okay. So we don't, we're not acting on those tonight.

MS. LUCERO: No. Just the cul-de-sac length and stone versus curb.

CHAIRMAN SULLIVAN: Okay. Commissioner Duran.

COMMISSIONER DURAN: Vicki, so the EZA last week approved master plan approval and that master plan approval was based on the approvals of the EZC, correct?

MS. LUCERO: Mr. Chair, Commissioner Duran, the EZC acted on both the master plan and the plat. They're the recommending body for both master plan and plat approval.

COMMISSIONER DURAN: So the recommendation in front of us from the EZC is the same recommendation that the EZA reviewed when they approved the master plan.

MS. LUCERO: Mr. Chair, Commissioner Duran, the EZC made a recommendation on both the master plan and the plat. So after the EZC it got split up to the master plan and those conditions. The EZC had a list of conditions that they approved and we separated them. So only those relevant to the master plan were heard by the EZA.

COMMISSIONER DURAN: Not the plat.

MS. LUCERO: That's correct.

COMMISSIONER DURAN: Not the final plat. So do you think that it's appropriate for us to know, to have details of the motion made by the maker at the EZA? The content of the motion had some requirements in their conditions that dealt with water concerns and I forget what the other ones were but I think that they're important to this body to know what that motion was, because there might be some testimony tonight that we're going to be asked to consider when in fact they were considered and incorporated into the motion at the EZA.

MS. LUCERO: Mr. Chair, Commissioner Duran, I do have a list of those conditions that were approved. And they certainly could be relevant to the plat approval as

well. If you like, I can run down the revised conditions.

COMMISSIONER DURAN: How many are there?

MS. LUCERO: I believe there's about four?

COMMISSIONER DURAN: Would you mind, Mr. Chair?

CHAIRMAN SULLIVAN: Not at all.

MS. LUCERO: One of the conditions was that any major changes in the planning design would go back to the EZA for approval.

CHAIRMAN SULLIVAN: Does that mean any major changes that would be made here tonight, because if this is final plat approval, this is all she wrote.

MR. CATANACH: Mr. Chair, if there's any changes as they're building out the subdivision, if there's any changes in lot and road layout or design, that that should come back to the EZA before --

COMMISSIONER DURAN: Rather than the EZC which is where those changes were going to go, or to staff. Staff was able to make those calls and we wanted to be apprised of any changes at the Board level.

MR. CATANACH: I think that was the basic intent, because certainly staff makes decisions on minor changes, but I think the intent was that any changes. Yes.

CHAIRMAN SULLIVAN: And it wouldn't normally, once the EZA has approved the master plan, the preliminary and final plans wouldn't normally go back to them. Is that correct?

MR. CATANACH: That's correct.

CHAIRMAN SULLIVAN: They only come to the BCC, because it's an existing subdivision.

MR. CATANACH: That's correct.

CHAIRMAN SULLIVAN: Okay, so you were adding a condition then at the EZA, Commissioner Duran, that said if you're making any changes you want it to come back to the EZA.

MR. CATANACH: And I think, I'm sorry, Mr. Chair, Commissioners, I think not only in lot and road layout design, but certainly any changes that have to do with density or use and again, I think that the intent was that there was some concern that any expansion, any increase in density, any other change other than what was permitted under the master plan for single family homes. Those type of things. So again, it might be a determination on the part of staff as to whether a change needs to come back to the Board having to do with a plat and development plan, or if it's a change that's relevant to the zoning for use and density, whether that would have to go back to the EZA. So again, in trying to determine what kind of change and which committee it would have to go to.

CHAIRMAN SULLIVAN: Okay, but I wouldn't see them having any changes in density once x-number of units are approved. That's it, isn't it? They're not going to add more units up on the site, are they?

COMMISSIONER DURAN: Mr. Chair, I think we were trying to appease a concern that the neighborhood had that in the past there was some changes made at the staff

level that didn't -- the public wasn't able to participate in.

CHAIRMAN SULLIVAN: Okay.

COMMISSIONER DURAN: So we made that condition so that the public would in the future have the ability to participate in any changes.

CHAIRMAN SULLIVAN: Okay. So that was number one.

MS. LUCERO: That was number one, and it did say major, any major changes.

CHAIRMAN SULLIVAN: Major changes. Okay.

MS. LUCERO: Number two was that the deceleration lanes would be developed as a part of phase 1. Also that the include the land use agreement as a condition of approval.

CHAIRMAN SULLIVAN: What is the land use agreement?

MS. LUCERO: With the Canyon Road Association.

CHAIRMAN SULLIVAN: Oh, the one with the Canyon Road Association.

That's the new one, I assume. Not the old one.

MS. LUCERO: Yes. And then I believe the last condition was in regards to the capacity of the water system. That the technical review team over at the City would make a determination within 60 days as to whether or not the system's capacity, meaning the volume, would cover the people that were listed in the land use agreement.

CHAIRMAN SULLIVAN: And who would make that determination? The City?

MS. LUCERO: The City's technical review team.

CHAIRMAN SULLIVAN: Okay.

COMMISSIONER DURAN: I might be able to add a little to that. There was some question as to whether or not the capacity of the system was adequate to provide water to a list of individuals, one of them was Rancho Elisa, which is a development that Duke Klauck owns, or used to own, and then Ten Thousand Waves and Hyde Park Estates. And those individuals were afraid that Mr. Brutsche was going to use up the entire capacity of that system and they would lose the ability to request regional water from the City. So the applicant stated that in their analysis, the system did have the capacity to provide water to the other members, individuals on that list and went so far as agreeing to allow staff at the City to make that determination and come back within 60 days with verification that the capacity was there. Is that close to it?

CHAIRMAN SULLIVAN: So that was the fourth condition.

MS. LUCERO: That's correct. Yes. It did have to do with volume, not necessarily the capability to deliver the water. And the last condition was that trails would be open to the public.

CHAIRMAN SULLIVAN: At all hours? No, I ask that because we went through this before a year ago and they were going to be open to the public only during 8 to 5, or something. When the gate closed, they weren't open anymore.

MS. LUCERO: Mr. Chair, that discussion didn't come up.

COMMISSIONER DURAN: That was the Dale Ball trail, wasn't it?

CHAIRMAN SULLIVAN: No, no. That was up on the Summit.

MS. LUCERO: I believe it was daylight hours.

CHAIRMAN SULLIVAN: Well, we may not agree to that. Is that what's in the condition, or what's it say?

MS. LUCERO: No, Mr. Chair, the condition wasn't specific. That's what the applicants are --

CHAIRMAN SULLIVAN: Are wanting, but it just said open to the public means open to the public. Okay. If it's not conditioned I would assume that. Okay. And that's the fifth condition.

MS. LUCERO: Yes. Those were all the additional conditions that were imposed by the EZA.

COMMISSIONER DURAN: Thank you, Mr. Chair.

CHAIRMAN SULLIVAN: Okay, other questions for Vicki? I had one, Vicki, or two. I don't understand what you just handed out. This looks like mumbo-jumbo. But without trying to understand it, tell me does this mean that they're reducing the open space. They've decided that the open space bonus is now only 45 percent so they only need to provide 45 percent open space instead of 60?

MS. LUCERO: Mr. Chair, that's correct. They did recalculate the figures using the 45 percent open space density bonus, and even with that, they still meet the density that they're proposing.

CHAIRMAN SULLIVAN: Does that mean that they're going to do more dense development on subsequent phases? Why did they go about recalculating this?

MS. LUCERO: No, they just, Mr. Chair, they basically just used different numbers. The lot sizes, the lots weren't changing. I believe it was the private open space within the lots that changed. But they're not adding any additional lots or any additional units.

CHAIRMAN SULLIVAN: How much open space are they required to provide?

MS. LUCERO: As part of a 45 percent density bonus?

CHAIRMAN SULLIVAN: Okay, it was 60 percent when I read it and now it's 45 percent.

MS. LUCERO: That's correct. As part of the 60 percent that they're originally proposing, they were required, I believe to do, I believe it was 91 acres of open space. And now, under the 45 percent density bonus they're required to provide 69.3 acres of open space.

CHAIRMAN SULLIVAN: So it's reduced from 98 to 69 acres. But if they're not changing the lot size or the lots, then where did it go?

MS. LUCERO: Mr. Chair, originally, they had more open space proposed on each individual lot that was private open space, so they're actually removing some of that private open space to give the lot owners a little more flexibility as to what they could use.

CHAIRMAN SULLIVAN: So you can be closer to your neighbor, as it were. You can build on it. And then, there was a letter dated October 29th from the County Hydrologist indicating that their water report was incomplete. And their water, there was a statement made that it didn't constitute a water conservation report nor a water budget. Has that

been rectified?

MS. LUCERO: Mr. Chair, the Hydrologist hadn't received a copy of the water service agreement from the City. The applicant has submitted that to us and they are proposing a quarter acre-foot per lot.

CHAIRMAN SULLIVAN: And Mr. Wust, are you now comfortable with the submittal on this project?

MR. WUST: Mr. Chair, there were two concerns. One was lack of a reference letter from the City showing water availability. I've just been informed verbally, not just, but I was informed verbally that they do have a commitment from the City and I'm okay with that. I don't need to actually see it, but I never have seen a water conservation report to this day. So whether it's required when the City is providing the water is an issue that the Commission should decide. I just know it's part of the requirements and it's never been submitted and I've never seen one.

CHAIRMAN SULLIVAN: It's a part of the EZ requirements, or the County Land Use.

MR. WUST: Mr. Chair, to me under the EZ requirements, it doesn't specifically say it but it says it must fulfil all the requirements of Article VII, Section 6 of the Land Use Code, which includes a water conservation report.

CHAIRMAN SULLIVAN: So that's still not been submitted according to you.

MR. WUST: Mr. Chair, I've not seen it.

CHAIRMAN SULLIVAN: Well, we can have the applicant address that. Any other questions of the staff? Okay, is the applicant present?

[Duly sworn, Karl Sommer testified as follows:]

KARL SOMMER: Mr. Chair, Commissioners, my name is Karl Sommer. My mailing address is Post Office Box 1984, Santa Fe, New Mexico, 87504. It's late and we will be as brief as possible.

CHAIRMAN SULLIVAN: We're here as long as you need us.

MR. SOMMER: Very well, I have an hour-long presentation. Actually, I'm here with David Schutz and --

CHAIRMAN SULLIVAN: The longer the presentation, the more the questions. You know how that works.

MR. SOMMER: I'm aware of that particular rule here. I'm here with David Schutz and Oralynn Guerrerortiz and Patricio Guerrerortiz. David is our chief planner on the project. Oralynn is the chief engineer. She and Patricio are our chief engineers.

I'd like to start out by just summarizing quickly as to what this project is about. And then I'd like to turn it over to David and to Oralynn, regarding some of the technical matters. I would like to say first that we agree to the conditions that Commissioner Duran has alluded to and we would accept those as conditions of any approval that you might be willing to grant here so that there is no question on the record. All of the things that Vicki talked about as being conditions to the motion that was granted last week at the EZA, we would agree to here. And specifically, tonight, Mr. Richard Ellenburg, Peter Wolf and

Karen Bailey are here from the Canyon Neighborhood Association and in the record, which we'll have here tonight, there is a copy of the land use agreement that was talked about and we would specifically agree to that as a condition of our subdivision plat approval.

I'd like to get to just a couple of things first about the water conservation report. In the EZ Subdivision Regulations, I'm not aware of any water conservation report that is necessary, but we have a water commitment from the City and we have quarter acre-foot limitations on each and every lot in the subdivision. If there is some additional report that is required by the County Land Use Code I'm not aware of it as applying in the EZ. The EZ, as you all know, has an ordinance, that is a zoning ordinance, the Extraterritorial Zoning Ordinance and the Extraterritorial Subdivision Regulations. The Land Use Code, insofar as I'm aware, doesn't apply here with respect to that. But I do believe that the water conservation measures that are talked about are typically contained in our covenants and we would certainly be glad, Mr. Wust, to include those in our covenants if that's the concern. But we are limited to a quarter acre-foot.

So, just to address that offhand. I'd like to approach you and hand out something we'd like to get in the record tonight and I'm not so sure how much we'll discuss it. May I approach? [Documents on file with County Clerk.]

CHAIRMAN SULLIVAN: And while you're handing that out, Mr. Sommer, Mr. Wust mentioned a letter from the City regarding water availability that he hadn't seen and I don't see that in the packet either. Do you have that?

MR. SOMMER: I do have a copy of it and I'll make it available to you. The manner in which that comes to the Extraterritorial Zoning Authority is from a letter from Robert Jorgensen. It's a memo that says water is available on the system. The City staff memo regarding this project confirms that we have water from the City and sewer available from the City and I can provide you a copy of that. I just need to dig it out here. I think a copy was provided to County staff and City staff before the EZA. So I'll dig that up if I can.

CHAIRMAN SULLIVAN: But is that a letter from the County Manager or the City Manager, the way they normally come, or rather the City Utilities Department, indicating water availability?

MR. SOMMER: It's from the City Utilities Department and it's from Robert Jorgensen. It's dated November 13th. It's in your packet at NB-5-16.

COMMISSIONER DURAN: In which packet? This one? No, the one from County staff that you've got.

CHAIRMAN SULLIVAN: Okay.

MR. SOMMER: I'd also like to get in the record because I don't think --

CHAIRMAN SULLIVAN: Wait a minute. Before you jump ahead there. This just says water service will require an agreement to construct and dedicate public improvements. It doesn't say they're approving anything. It says the referenced subdivision is located within the Summit service area and can be served from the Summit area water

system. Water service will require an agreement to construct and dedicate public improvements. Water service to the referenced project is subject to all City rules, etc., etc., etc. This isn't an agreement though. This isn't a service --

COMMISSIONER DURAN: Mr. Chair, could I just ask one question of the Hydrologist? Did you get that word that they had water service from Karl, or did you talk to someone at the City?

MR. WUST: Mr. Chair, Commissioner Duran, actually, Vicki told me that they had a letter.

CHAIRMAN SULLIVAN: The he-said/she said kind of thing.

COMMISSIONER DURAN: And Vicki, where did you here it from?

CHAIRMAN SULLIVAN: Where did you hear it Vicki? Let's find out where this rumor came from.

MS. LUCERO: Mr. Chair, Commissioner Duran, that was actually, City staff was at the EZC meeting and Bob Siqueiros stated that.

CHAIRMAN SULLIVAN: He said that they had a water service letter.

MS. LUCERO: Right. That it was in place. That there weren't any issues as far as water.

CHAIRMAN SULLIVAN: Okay, and Mr. Sommer, do you have a copy of it in your file, there?

MR. SOMMER: I have a copy of the City report and in addition, Galen Buller, the head of the City's water utility was at the Extraterritorial Zoning Authority with their chief counsel on water issues, Ms. Singer. And both of them confirmed on the record under oath that we have water from the City and sewer available from the City.

COMMISSIONER DURAN: I will concur with. I was at that meeting.

CHAIRMAN SULLIVAN: And could you give us a copy of that paper?

MR. SOMMER: I believe that the City staff reports are a part of your records, are they not, Vicki? I think you have them in your packet.

CHAIRMAN SULLIVAN: Okay. Maybe I just missed it. I have school report, Fire Marshal --

COMMISSIONER DURAN: Do you think we can move on, Mr. Chair?

CHAIRMAN SULLIVAN: Yes, but I'd like -- I don't see, again, we're on final plat here and I don't see a letter from the City saying that you have water availability. I understand what you're saying, in the master plan hearing that there was testimony that you had that and Commissioner Duran confirms that.

MR. SOMMER: If I can direct your attention, Chairman Sullivan to NB-5-6, which is in your packet, page NB-5-7, it says from the City of Santa Fe, dated November 13th, proposed development will be served by the City utility extensions, sewer and water. We have -- I don't know exactly what you're looking for from us.

CHAIRMAN SULLIVAN: What I'm looking for is -- that's from the Planning Department. I'm looking for a water service availability letter, is a letter on City letterhead. We've seen hundreds of them. It comes from the Utility Department committing

x-number of acre-feet. We just saw one in the previous project you had.

MR. SOMMER: Well, what you saw on the previous was from 1999. Now, what's in effect at the City is a Resolution 2002-2 that develops a technical review team, of which Mr. Bob Siqueiros is a member. They are the ones that inform the applicant and the public bodies as to whether there's water. So it comes now from the technical review team. You don't get what you are referring to as a water availability statement anymore. What you get is a confirmation from that team in the form that Mr. Jorgensen gave us and that Mr. Siqueiros gave us. That's the form in which water is confirmed by the City in addition to the sworn testimony of the Utility Director on Thursday that water is available from the City's utility.

So that's the manner and form in which it comes these days, since 2002.

CHAIRMAN SULLIVAN: Okay.

MR. CATANACH: Mr. Chair, I would refer you to page 5-16 of your packet and that references water service.

CHAIRMAN SULLIVAN: Yes, he mentioned that earlier. That was the one that says that water service will require an agreement. So I guess an agreement hasn't been consummated yet with the City. Is that what you're saying?

MR. SOMMER: A service agreement doesn't get consummated until you have an approval from their plans, and you have an agreement to construct and improve their system. So that's when you get a service agreement, and that's at the very end of the process. You don't get one up front. You don't get a service agreement. They will not give you an agreement to serve until you've met all of their conditions related to the construction, dedication and improvement of their system.

CHAIRMAN SULLIVAN: Okay. So you'll get that before you start construction.

MR. SOMMER: The answer is yes. We will have an agreement to construct and improve before construction begins.

CHAIRMAN SULLIVAN: Okay. Go ahead.

MR. SOMMER: I'd like to also put in the record the actual plans that are before you. Often you don't get a chance to look at them but I'd like to make sure that they're in the record tonight.

What we'd like to do tonight is we'll have Mr. Schutz go through a little bit of the history of the project and discuss some of the density issues related to it. Ms. Guerrerortiz will go through some of the individual specifics of the project from a technical standpoint, and in the end I would like to address the issues raised in the packet that I gave you that is part of the record consisting of a summary and ten tabs of documents. We'll make that as brief and we'll get through that as quickly as possible. So with that, I'm going to turn it over to Mr. Schutz to go through some of the history and some of the density issues. Thank you.

[Duly sworn, David Schutz testified as follows:]

DAVID SCHUTZ: Thank you, Mr. Chair, members of the Commission. It

is late and I'm going to try and go through this very briefly, but for the benefit of those of you that aren't familiar with the history of the project, let me just go through very quickly some of that history. The area that we're talking about is the Grevey property right here which is this donut that you see right here. This property is located in the northeast quadrant, actually outside of the City limits in the Extraterritorial Zone, this being the city limits right here. This is the current Summit Subdivision, Hyde Park Estates, Nun's Curve, Little Tesuque Creek, Los Cerros Colorados, Sierra del Norte is up in there. This is Hyde Park Road and this is a waterline that extends into the Summit property to serve the whole northeast quadrant.

Up until the late eighties this property, this whole area is relatively undeveloped, Hyde Park Estates being the only real subdivision that was developed up until that time. Over the years, Summit phases 1, 2, and 3 were developed, approved by the City. Sierra del Norte came in, Los Cerros Colorados came in Ten Thousand waves came in. Rancho Elisa came in and so over a period of about ten to fifteen years up until today, there's been significant growth and development in the area as you know.

In about 1991, we got together with our neighbors and decided to convene and formulate the Hyde Park Road Planning Group. And in 1994, that neighborhood plan was approved by the Extraterritorial Zoning Authority. That plan contemplated and set forth certain principles and policies that were to guide any development in the area over the years to come. It was one of the first plans to be approved by the Authority at that time. Once the plan was approved, Summit proceeded to request and receive approvals for the remainder of it's phases. This plan before you that I'm going to present represents the final, the culmination of Summit's development program since 1991. As contemplated, the project consists of about 500 acres of which only 154 of it will be developed. There'll be a total of 105 lots on a total of 500 acres. All of the property will be served by City water and sewer and will be developed in nine phases over a fifteen to twenty year period. We're not going to drop 100 units on the market today or over the next two or three years. This is a fairly long-term project and will be developed over a fifteen to twenty-year period.

I've condensed my presentation because I don't want to extend into the night, but I do want to say something about density, because there will probably be some speakers that follow me that are going to try and imply the density -- that we don't comply with the Extraterritorial Zoning Ordinance, that we don't comply with the Hyde Park Road Planning Group plan, that we don't comply with environmental standards. And that's just not true.

As I mentioned, the average, the gross average density, if you take the number of acres and you divide it by the number of lots, our gross average density is 4.37 acres per unit. If you look at just net density and just look at the developable acres that we're developing, which is 154, the rest being committed to open space, and you divide the number of lots into it, 105 lots divided into 154 acres, the density is about 1.5 acres per dwelling unit.

The two significant documents that address density, that really significant

documents that address density and that are relevant to this case, the first one is your own Land Use Code, the Extraterritorial Zoning Ordinance.

This is what I got out of the Extraterritorial Zoning Ordinance and I've highlighted the significant portions of it, and the title is density using imported water service in the rural area and it talks about three principal goals. One is the preservation and sense of open space. We've certainly done that, dedicated some 350 acres into open space. The protection of groundwater resources. It was through Summit's efforts that water and sewer were extended into this area and now the beneficiaries are the neighbors and all of the folks that are served by the sewer and water system. And the provision of more affordable residential development.

You move down, and the second paragraph there, the purpose of the open space density bonus transfer option for developments proposing use of imported water in the rural area district are to preserve an open space feeling, to encourage the use of imported water, and to create variety in residential development patterns. It goes on and continues, To grant density increases based on an approved formula for density bonus and objective open space ratio and density transfer for residential development outside of the urban growth area which use imported water for regional water service. If region water is to be provided by Sangre de Cristo Water Company, the development shall receive prior approval for any water service area boundary extension. Which we have. We did that in the early nineties.

Developers using the density bonus shall provide areas of dedicated open space. We've done that. And then on the next page, 22, density transfer or clustering of lots. We've done that. And provide alternatives to the use of individual septic systems. It continues. So the ordinance is very clear. If you look at the bottom of page 22 it says, Objectives: Provide incentives for developers to build affordable housing subordinated regulations and capital funding programs. And on the next page, 23 it continues, item B, Granting of density bonuses to developers who provide affordable housing in their projects. I can tell you unequivocally, we are the only developer in the northeast quadrant that has provided any, or are going to provide any affordable homes in this area.

The other significant document that I want to bring to your attention, Mr. Chair, is the Hyde Park Road neighborhood plan that was adopted by the authority in 1994. In it, projections were made by the planning group as to what the holding capacity of this property would be. And if you look in the package that Karl gave you on the highlighted yellow tab, you will see a chart, and I'll pass this out. This comes right out of the Hyde Park Road Planning Group neighborhood plan and at that time --

COMMISSIONER DURAN: Excuse me, David --

MR. SCHUTZ: Tab 9, Commissioner. So if you look at that chart, it was projected back in 1994 that this property was projected to have a holding capacity of 118 lots, 100 units that were supplied by water and sewer and it was presumed that 18 lots would not be served by water and sewer and the density would be 12.5 acres. And so even at that early stage of the game we contemplated 118 lots on the Grevey property. Today

we're proposing to you 105 lots. So the point I'm trying to make, Mr. Chair, is that there is no density issue. We're in total compliance with the Extraterritorial Zoning Ordinance. We're in total compliance with the neighborhood plan, and we're in total compliance with all the regulations that we're regulated under. So I think that issue should be put to rest.

CHAIRMAN SULLIVAN: Mr. Schutz, I had a quick question, just for my own edification. On this ordinance, on the second page, you were talking about density using imported water. Under paragraph e, it says, The smallest parcel to which this policy applies is 12 acres.

MR. SCHUTZ: Correct.

CHAIRMAN SULLIVAN: And your parcels are a lot smaller than 12 acres.

MR. SCHUTZ: No, Mr. Chair, members of the Commission --

CHAIRMAN SULLIVAN: Or is that, you're talking about the gross size of the --

MR. SCHUTZ: Of the parcel for development.

CHAIRMAN SULLIVAN: Of the parcel for development.

MR. SCHUTZ: Yes.

CHAIRMAN SULLIVAN: Okay. Thank you.

MR. SCHUTZ: With your approval, I'd like to ask Oralynn to make a brief presentation about the engineering aspects.

[Duly sworn, Oralynn Guerrero Ortiz testified as follows:]

ORALYNN GUERRERORTIZ: I will be extremely brief. I'm Oralynn Guerrerortiz. I'm with Design Enginuity, P.O. Box 2758, Santa Fe, New Mexico. Very briefly, the project is going to be service by City water. There'll be fire hydrants located within 300 feet of every building site. The fire hydrants will flow at 1000 gallons a minute. The project is also connected to the City sewer system.

The roads have been designed to minimize disturbance of 30 percent slopes. We do have some significant 30 percent slopes. Disturbances, the biggest one is related to an emergency access connection. It's actually a gated access road. We're putting that road in because it's the right thing to do. It's something the Fire Marshal would like. Also at the request of the Fire Marshal and it's a very good idea, we're providing a secondary emergency access also gated with Knox locks over by Hyde Park Estates, and at the Fire Marshal's request, we're bringing a fire hydrant to Hyde Park Estates that will also flow at 1000 gallons per minute. And that will be located on Camino Lisa, which is a road within Hyde Park Estates.

We are using centralized detention ponds. Density has been raised very quickly. I'll try to be extremely quick. We're actually, if you just look at this plan you can see there's a lot of green space on our project. But to get the density for 107, we actually have 107 dwelling units on 105 lots. To get the required density for our project, we only need or are required to have 69 acres of open space. We have 76 proposed. We also have 14 HOP units in this project, seven of them will be constructed in the very first phase.

The other thing I'll mention is on Hyde Park Road, we are building a new decel

lane that will serve this project. Variances, one of them is with regard to curb and gutter. Throughout these Summit projects we have used stone curbing in lieu of traditional concrete curbing because it's more attractive and it serves the same purpose and we're hoping that you'll continue to support that variance as you have for our previous nine phases.

The other variance is with regards to the length of cul-de-sac. In actuality, it's a really interesting situation. Because of the loop roads we're building, we're eliminating the need for cul-de-sac variances that have been granted previously. This was a cul-de-sac within Summit 7 and 8 that had been granted in a variance because of its length. It's not going to be part of a loop system that goes over the Hyde Park Estates eliminating that need. But this cul-de-sac, unfortunately, is more than 1000 feet. I know it's under 2000 feet but I can't remember the actual number. I think it was 1500. We also had an extremely long cul-de-sac. I think it was approved at over 3900 feet as part of the High Summit Subdivision. We're going to reduce that significantly because of this connection. But we do have this one here and I believe again it's on the order of 1500 feet. I can't recall the real number. It looks as maybe it's less than this one.

Anyway, those are our two cul-de-sac variance requests and they're directly related to terrain. We did loop where we could and where we found it possible but the terrain is rather restrictive in this area. I think that's about it. I mentioned the 30 percent slope disturbances and I would also say that one of the other requests was with regards to the 50-50 rule. The EZ has a requirement that half of the homes build be built on slopes of 20 percent or less. We, with discussions with neighbors, with a desire to get the homes off ridgetops, we're pushing homes down the hill, building sites down the hill. That makes it harder to meet the 50-50 rule and that's where that request came from. I bring that up mostly for reference purposes. I just want to enter the density and open space requirement calculations into the record, if I can. [Exhibit 3] Thank you very much, gentlemen.

MR. SOMMER: Mr. Chair, members of the Commission, I'd like to make one clarification regarding the variances. The variances that were granted at the Extraterritorial Zoning Authority last Thursday included the 50-50 variance, and also the slope disturbances. Those are also found in the Subdivision regulations and this hearing is noticed up for those variances as well, properly noticed up for the exact same variances. As Oralynn explained, they are to minimize the impact of development. They are based on the topography and they are a minimal easing. We've also addressed the variance criteria more specifically found in the Code.

I'd like to just summarize. If you would open the packet that I gave you, the black packet, you will see a list of ten issues that have arisen in the last sort of two weeks that we've tried to address. I'm not going to go through each and every one of the ten issues, but I'd like to summarize a couple of things. One is our outreach to the neighborhoods that we've dealt with and what the history of that has been in this project. The second is a confirmation that we do have sufficient water and that we are undertaking to solve the condition that was imposed at the Extraterritorial Zoning Authority. And finally, under tab 10, I'd like to tell you a little but about what Mr. and Mrs. Brutsche have done in this neighborhood.

So let me start if I can with what have we done with respect to the outreach to the neighborhoods that we have been dealing with. I will start with the Canyon Neighborhood Association. The Canyon Neighborhood Association is an association as I understand it, incorporated for the purposes of -- for the express purposes of preserving the natural beauty and the natural environment of the Santa Fe Canyon and its tributaries. That includes the Santa Fe Watershed and the Santa Fe Canyon Watershed. This property, if I may, the Aztec Springs Watershed runs right through this property here. What you see in green right here is all undisturbed forested area. It has a spring running down the middle of it. And it is one of the express purposes of the Canyon Association to preserve that in its natural condition and to prevent any disturbance from development. In addition, they have as a purpose to preserve the visual beauty of it and to minimize or limit the impact of development from a visual standpoint from one looking up into that Canyon. That was the purpose that was given to us, and we met with them for the course of about 60 days and we ended up with a land use agreement which is part of the packet which I have in front of you under tab 8. You will see that it's the land use agreement that's been signed by all the parties. It doesn't have all the exhibits because they are a little voluminous to put in this packet.

But I will tell you that I think it achieves the purpose that the Canyon Neighborhood Association set out for us and that was to one, minimize the visual impact, and two, preserve the natural beauty of this watershed. That's what we're doing as part of this agreement.

I'd also like to tell you we have in place a signed, we have signed a donation agreement to the Nature Conservancy for that area, which constitutes the Aztec Springs Watershed. In addition, when we offered to contribute the property to the Nature Conservancy, the person that I was dealing with, Mr. Bob Findling, indicated to me that the Nature Conservancy is a non-profit, has to raise all of its funds through donations. There is a huge cost associated with being a steward of this property. Mr. Findling requested that Mr. Brutsche, in addition to giving the property, that he establish a stewardship fund to take care of its management over the course of time that the Nature Conservancy has it. He asked Mr. Brutsche to fund up front \$350,000 of the costs, which Mr. Brutsche has agreed to do as part of his donation and as part of his setting up of his stewardship fund. That was acceptable to the Nature Conservancy. I think that it achieves also, it also helps to achieve the purposes that the Canyon Neighborhood Association set out for us.

One other thing that came up in the course of the discussions recently is the nature of the trails through there, and I'd like to make it clear that what the EZA, the Canyon Neighborhood Association have made it clear to us that trails are going to be created that they be open to the public. We have agreed to that. It's on the face of our plaque and it's part of our donation agreement with the Nature Conservancy, that those trails be open to the public. Now, the management of those trails is obviously going to be regulated by the Nature Conservancy and possibly by the City of Santa Fe because that white area right in the middle of the green there is owned by the City of Santa Fe and they're going to have to manage how they do the trail system.

So I think that summarizes. We have reached out and dealt in good faith and think come

up with an extraordinary agreement for the Canyon Neighborhood Association and I'm not going to go through it specifically. But it achieves the purposes they set out for us. It has teeth in it for its enforcement, and it will be specifically enforced by the Canyon Neighborhood Association and the Audubon Center, which is the Randall Davies Audubon Center.

Let me turn to a more problem area that we ran into recently, and that is with the Hyde Park Road Planning Group. It's been in the press lately. Frankly, I was surprised tonight to see that we don't have the level of opposition that we had generated at the last hearing last week. Here's the story. On August 16th we went to the Hyde Park Road Planning Group. That planning group consists of five founding members, each of which has a veto vote over anything that that group does. And that means that all of the decisions of that group have to be unanimous. We went to them because Mr. Brutsche's organization is a member of that group. We sat down in my office on August 16th. We went through our plan and at the time we went through our plan it had 131 units. The group unanimously agreed to support and approve the project. That was on August 16, 2003. That was the first step we took to reach out to our immediate neighbors.

We left that meeting and you will see behind tab 1 the testimony of Paul Dunn. He spoke at the Extraterritorial Zoning Authority, under oath, and he said, When we walked away, when I walked out of that meeting there was no doubt in my mind that we as the Hyde Park Road Planning Group had approved this particular development. What happened next was, you have also behind that document the letter from Mr. Ray Olson. Mr. Ray Olson is here tonight. He's been here all night. He wrote you all a letter and he confirms that there was a unanimous approval of our plan and that the group agreed to support us publicly in the hearings before this body, the EZC and the EZA. After that, and you'll find in the next document behind that tab, you'll see that I got a call from the *New Mexican*, Ms. Ann Constable wrote a letter about our dealings with the Canyon Neighborhood Association. On page 2 of that article, I've highlighted in blue for you what I told her as a result of a meeting I had with the Hyde Park Road Planning Group and the article says, and this went out across the community, According to Sommer, the Hyde Park Road Planning Group supports the new plan. That was one month after we met.

From the time of that article and the time of that meeting, up until two weeks ago, we had absolutely no opposition from the Hyde Park Road Planning Group. So what happened? As you all know, there's been a great deal of controversy. Let me summarize it by saying this. Mr. Duke Klauck received approval from the Extraterritorial Zoning Authority to expand his Ten Thousand Waves facility. And you will see that on this map, Ten Thousand Waves is located right here. It's in the county, not inside the city. It is susceptible to water service from the City system, and in fact has water service from the City system, a system that Mr. Brutsche built and conveyed to PNM, which is not owned by the City system, serves Ten Thousand Waves.

Mr. Klauck's approval includes the addition of a hotel on what is now residential property. The condition placed by the Extraterritorial Zoning Authority on that hotel on the property known as Rancho Elisa was that he go to the City of Santa Fe and get water for that. And that's what he did. He went to the City. That was the condition they placed on him, and Mr. Klauck ran into Resolution 2002-22, which is behind tab number 2. I've highlighted for

you on page 3 the two sections that are important here. One says that if you are outside the city limits and you're requesting an extension from us -- I'm summarizing, obviously, paraphrasing -- you must have a prior valid, written agreement that requires us to serve you. That's what the City's condition was on extensions in the county and it has been for the last year and a half. Or, if you don't have one of those, Section 6 says you can always go to the City Council and ask us to approve your water extension.

Mr. Klauck found himself with an approval by the EZA with an uncertain water supply for his expanded development. What did he do? Instead of going to the City Council, instead of going to the City and asking for the extension, he immediately turned to Mr. Brutsche and he said, he did not ask, he demanded that we immediately assign over to him our water. And when I say "our water" we have a contract with the City, we have a prior valid, agreement that requires the City to serve Mr. Brutsche's development. It's not our water and we're not saying that we're the only ones that have the right to water, but Mr. Brutsche has a clear, unequivocal right to water from the system, because he built it. Because he conveyed it to the City.

Behind tab number three you'll see a first memo received November 10th from Mr. James Siebert who represents Mr. Klauck. On page 2 there is not a request, a basic demand that says we immediately assign the water or our right to water to Mr. Klauck, for a sufficient amount of water so that he could prove up his water under this condition from the EZA. Well, we weren't able to do that because the agreement that we have with the City is a little unclear as to what could be assigned or what cannot be assigned. Instead of working with us, I got the next memo dated November 17, 2003 from Mr. Klauck directly. And in the last paragraph, highlighted for you, Mr. Klauck goes on to tell me that unless we get him an agreement with the City by the end of November he is going to manufacture opposition from our immediate neighbors in the Hyde Park Road area in an attempt to stop us.

He euphemistically says that he's going to go on an educational campaign with the Hyde Park Road residents and the EZA Commissioners. Well, I'll tell you, last Thursday we saw the results of his educational campaign. This room was packed with 125 people who had been misinformed, misled and basically asked to come and oppose our project until Mr. Klauck got his water. If you look at the memo he says specifically, "Unless we have a signed agreement with the City this month guaranteeing water to Rancho Elisa," he does not say guaranteeing water to the entire community, he says to him, "I intend to do an educational campaign for the Hyde Park Road residents and the EZA Commissioners. You may discover considerably more opposition at your next hearing."

He also implies that a simple phone call to the decision makers may have changed the results of a public hearing. The long and short of it is Mr. Klauck manufactured and generated opposition from a group that had previously approved our project and he did so for one purpose and one purpose only and that was to blackmail Mr. Brutsche into doing something for Mr. Klauck that frankly Mr. Brutsche cannot do. Mr. Brutsche doesn't own the water system. The City owns the water system. The City passed a resolution that says, Mr. Klauck, you have to have an agreement with us that says you can have water or you've got to ask us for it. He chose not to ask for it and he chose a different tactic.

The tactic resulted in, in my opinion, in one of the most vile attacks on Mr. Brutsche and Mrs. Brutsche, an unfair characterization of them and their business over the course of the last 10 years. If you turn to tab 10, I've listed for you the things that Mr. and Mrs. Brutsche have done for this neighborhood over the last ten years. They extended the regional water system at their expense. They have donated in excess of \$700,000 towards the purchase of open space in this neighborhood. They donated 50 acres of land along the Little Tesuque to the Trust for Public Lands. They granted public access, trail easements throughout their developments. They conceived of a development-free corridor and they've ensured that their developments have preserved that corridor. They are the only ones in this neighborhood who have done that. They've imposed restrictive covenants on their developments in the neighborhood far stricter than the Codes that apply in this area for the express purpose of preserving the quality of this neighborhood. They have entered into the written agreement with the Nature Conservancy that donates over 340 acres of land that will ultimately become public lands, hopefully in the hands of the City. They've agreed to make a very substantial donation to the Nature Conservancy. They've entered into the land use agreement with the Canyon Neighborhood Association for the express purpose of preserving the ridgetops and the Aztec Springs Watershed. They're the only parties in this neighborhood to do affordable housing. They've already done the necessary retrofits on the City system to ensure that there is water available on the City system to serve this development.

You've already been through the other remaining items on that list and there are three left. I would say, the long and short of it is Mr. Brutsche and Mrs. Brutsche have been good neighbors. They reached out to this neighborhood and unfortunately, their good faith was repaid in a manner which frankly, was fairly offensive. And what it sought to do was to undermine their credibility with their immediate neighbors. I'm glad to say that it didn't work and that the Extraterritorial Zoning Authority found a way to really home in on the issue of water availability in this area to the neighborhood. And they imposed a condition which said, Would you please accept a condition that allows the City to determine that there is water available from this tank to serve people outside the city limits in this area from this tank. We know from our engineering experts here that this tank has the capacity to serve up to 720 residences. That's enough to serve everybody's who's requesting or might request water service outside the city limits.

With that we would stand for any questions you might have related to any of the issues that we've discussed. And I know there are other people here to speak as part of the public hearing. Thank you very much.

CHAIRMAN SULLIVAN: Questions for the applicant?

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Montoya.

COMMISSIONER MONTOYA: Mr. Sommer, regarding the -- I need some clarification. You have total dwelling units, 107 on 105 lots. That means two lots are going to have two dwellings on them?

MR. SOMMER: Yes. They will be house and guesthouse.

COMMISSIONER MONTOYA: So just two will have guesthouse and a house.

MR. SOMMER: That's correct.

COMMISSIONER MONTOYA: Okay, so you would estimate about what, 13 percent would be affordable housing then?

MR. SOMMER: Sixteen percent.

COMMISSIONER MONTOYA: Sixteen percent?

MR. SOMMER: The City's affordable housing program, you heard from Mr. Fields earlier today, they were doing 11 percent, we're following the City's affordable housing program, their HOP program, Housing Opportunity Program, and it requires 16 percent affordable housing and we're doing almost half of it in the first phase.

COMMISSIONER MONTOYA: Okay. So you would count the 105 lots by the 14 affordable lots.

MR. SOMMER: How it works is you say 91 lots are market rate, 16 percent of that is 14, so you add those 14, so 91 plus fourteen is 105. I've also, there are a couple of things I'd like to clarify. We're actually at 103 lots and I'll go over that in just a second. But anyway, to answer your question, the way they calculate it is 91 market lots, 16 percent of 91 is 14, and so you add that on. That comes to a total of 105.

COMMISSIONER MONTOYA: Oh, okay. Thank you.

MR. SOMMER: I did neglect to say one thing. At the EZA, we agreed as part of our discussions with a couple of members of the Hyde Park Estates area right here, there are some lots right up here that look across at this property. There is a prominent knoll in our development in the area at the northeast, at the northeast area of the Grevey property. We've agreed to take the most prominent building site out of that lot as part of our discussions with the neighbors. It's not in our plans because it came up at the EZA and I agreed to it on the record and I'd like to make it part of this record. In addition, we've agreed to, in lots 1, 2, 3, 4, 5, 7, 9, and 10, that area of our plan, we've agreed to take two lots out of there, reduce the number of lots by two to reduce the density because of the potential visibility.

I'd like to add that all of our houses have a height limitation of 14 feet from the highest grade and 16 feet at every other location. So these are going to be single story construction. The other thing that we've agreed to do and which we will put in our covenants is the people in Hyde Park Estates are going to look across at this development. And they don't want to see, if possible, shining, reflecting lights during the summer off of like flues and roof equipment and that kind of thing. We're going to impose covenants to limit and reduce that by requiring that they be painted, reduce the reflectivity, require that they conceal it with parapets and the like and we'll go through that with them as we develop those covenants.

But I wanted to put on the record here tonight, because I didn't do so earlier, that we had made that commitment to those neighbors and we will follow through with that even though I don't believe it was a condition at the EZA. We agreed to do that. We're agreeing to do that here tonight. And whether or not you include it as a condition I want the record to be clear that we will follow through on that with those individuals.

I know that Mr. Ellenburg will also probably like the reflectivity issues included in the

covenants that we've agreed to with them and I have no objection to doing that and that would make it specifically enforceable by the Canyon Neighborhood Association and the Audubon Center. Thank you.

CHAIRMAN SULLIVAN: Commissioner Montoya, anything else?

COMMISSIONER MONTOYA: Mr. Chair, I don't know, staff or whoever, how long has the City had that land in the middle of that property and who did they obtain it from? I'm just curious.

MR. SOMMER: It's been well over 50 years.

COMMISSIONER MONTOYA: Fifty?

MR. SOMMER: Well over 50 years.

COMMISSIONER MONTOYA: And was it donated to the City?

MR. SOMMER: I think it was donated to the City as part of the funding that the federal government did for education. And so municipalities were given land as part of being able to provide for the education of their citizens. That was the tract that they got, I believe. And it's been in their hands for a very long time. It's landlocked by the way. They don't have access to it. The City does not have access to it and part of the discussions that we've had with the Nature Conservancy is that they will get access and that the City and the public will have access to public land, legal access. I'm sure that the people who live in that area can tell you that people are hiking on it all the time. There's a lot of wildlife back in there. There's bear, there's deer. There's many birds. It's a beautiful area and there's a spring that runs through it. The City has a very big interest in managing that well. So that's part of the donation agreement that we're working with the City on.

COMMISSIONER MONTOYA: Thank you.

CHAIRMAN SULLIVAN: A question I had, Mr. Sommer, which is one I had for one of the other applicants was under this HOP program you say seven units will be developed during phase one. Who's going to develop them?

MR. SOMMER: Mr. Brutsche or the development entity that Mr. Brutsche runs will develop them themselves. He will develop the lots and build the homes.

CHAIRMAN SULLIVAN: And he'll build the homes.

MR. SOMMER: That's correct.

CHAIRMAN SULLIVAN: So he will then meet the City's income requirements, or will they be sold or will that be turned over to Homewise or some other entity?

MR. SOMMER: We are working with the Santa Fe Community Housing Trust. There are two things that have to happen. We have to sign with the City before we can record any plat. A HOP agreement, so the agreement that Mr. Catanach was requesting as part of that other application you had, we'd have that with the City. We're also working with Mr. Ben Martinez at the Santa Fe Community Housing Trust to qualify our buyers under the City's program. So we're working with two entities. One is the City, the other is the Santa Fe Community Housing Trust.

CHAIRMAN SULLIVAN: Okay, so it's not a situation like at Los Frijoles

where they sold the lots for \$30,000. You're going to build and close on the homes, the completed home.

MR. SOMMER: That's correct.

CHAIRMAN SULLIVAN: Okay. Thank you. Other questions for the applicant. If not, this is a public hearing. Are there those present who would like to speak, either in favor of or in opposition to the project. Okay, why don't you just stand up and stretch and have the Clerk swear you in. We don't have any organized method here. If you want to just move to the front and we'll catch you as you come up to testify. Yes, sir.

[Duly sworn, Baylor Trapnell testified as follows:]

BAYLOR TRAPNELL: Chairman Sullivan and Commissioners, my name is Baylor Trapnell. I live at 2092 Paseo Primero, 87501. My lot backs up on the Grevey property on the development. The ridgeline that defines the watershed or the non-watershed basically ends up in my backyard. I bought my lot in 1982 and I've lived there every since I built my house in '84 and '85. It's been wonderful living next to a huge piece of undeveloped land but it hasn't been without problems and concerns.

I have neighbors living in the woods. And that creates a fire concern because one cigarette butt on a windy June afternoon 100 feet from the edge of the watershed could cause quite a bit of damage before anyone got to it. And while the watershed is patrolled and closed to public access, the land that's going to be developed is open to anyone who chooses to camp up there and many individuals have and do. I can show you a campsite that's a stone's throw from the watershed. Any day of the week individuals can be seen on Hyde Park Road, hitchhiking up and down and they move around in the woods, living there.

Another concern has arisen more recently with the bark beetle infestations. The elevation of this development is approximately 8,000 feet at its highest and we have outbreaks of bark beetles but they are not everywhere. I belong to both the Santa Fe Summit Homeowners Association and the Los Cerros Colorados Homeowners Association. Both those bodies have taken very aggressive positions fighting the bark beetle infestations. Owners are required to spray and they're required to remove infested trees to prevent further spreading.

A piece of property this size undeveloped is uncontrollable, both from human access and from insect access. I think we're fighting a pretty good holding action up at that elevation, but if that land is not developed and placed under the stewardship of individual owners and the oversight of a homeowners association, there's just nothing to control what's going on on there.

I've also known Mr. Brutsche since 1985 and watched as he's developed up and down Hyde Park Road and I can't think of anyone I would rather have develop this property who's done a better job in the neighborhood. He's done more things for the neighborhood and who would do I think a very fine development like his others on this piece of property. And so I urge you Commissioners to approve this development. Thank you.

CHAIRMAN SULLIVAN: Thank you, sir. Next speaker. And please limit your comments to three minutes.

[Previously sworn, Paige Pinnell testified as follows:]

PAIGE PINNELL: I didn't realize we had been limited to three minutes. My

name is Paige Pinnell, P.O. Box 2892, Santa Fe, 87504. I'm here representing a group called Save our Sangres. We're concerned that this piece should not be developed at all. As you can see, it has the City piece in the middle of it. It's in the middle of all the trail systems. It abuts the watershed area. It's as priceless a piece as the MacLaine piece, as the Hughes piece, as the Parker piece to the public domain, which our group, by the way, helped to save those pieces.

We're very concerned about the rapidity that this particular project has been run through the process. There has been very little attempt and very little help at getting public input, in fact everything's almost been done to keep it at a minimum and within certain constraints. I only found out about this thing two months ago at a Canyon Association meeting. And many people just found out about it the other day. In fact the Governor of Tesuque Pueblo, who was here tonight for a while, just found out about it last week. He was sorry he could not be here but he asked that I express that to you, that he felt like the Pueblo had not had enough time to scrutinize this particular development on a number of levels and one of them is this particular area has two major archeological sites on it that have been discovered but nothing's been done about them and Tesuque definitely would like to see those sites, see if it's part of their cultural realm, and then talk more about what to do with it.

But if this project does continue, those sites will be destroyed. Where they're platted will be gone. Also Tesuque Pueblo's concerned about the Little Tesuque area. But we feel like there are other issues that are so large that at least more time needs to be given to scrutinize them. Water, fire, traffic concerns that haven't been met, the archeological sites which I have mentioned, the fact that the City needs to look into its ability to be able to furnish water to this project. And I think it's kind of a horse before the cart to okay this project and then later have the City find out that their pipeline cannot furnish the water that Mr. Sommer claims that they can.

The density is a problem. The fact that so many variances are going to be given for terrain management. And I pointed out at the Extraterritorial Zoning Authority that a lot of people don't know that the County's going to be involved in a suit that will be happening at the federal courthouse the end of next month concerning how much authority the County has over federal land that falls within its jurisdiction. And this has to do with the ski area and how much terrain they're going to damage in putting a new lift in. And it's a very interesting question. In fact, the ski area is going to dislodge less land than this project will. I find that very interesting.

I also feel like that a good case to be made, this project should fall within the Mountain Special Review District. If that was the case, it would be one house every 20 acres. Again, time -- this thing has been propelled so swiftly that a lot of these issues have not been dealt with adequately. And I do feel like a lot of the opposition that was here at the Extraterritorial Zoning Authority, some of them even came in tonight, they saw when it was on the agenda. They looked around, saw the only person that was against the project is not here tonight with the Commission, and just decided to bag it. I think a lot of people feel like it's going to end up in litigation and what the heck? Why spend your night doing this when it's going to end up in litigation anyway. I personally feel like I'd like to spend my night asking you all to table this thing until a lot of these issues have really been honestly dealt with, public input has been heard

and a really good decision is made on what to do about this property. And that would give us time to find a land trust that would take this thing on and do a wonderful job with it. It should not be developed. Thank you very much.

CHAIRMAN SULLIVAN: Thank you, sir. Next speaker.

[Previously sworn, Ben Martinez testified as follows:]

BEN MARTINEZ: Ben Martinez, 649 Granada, with the Santa Fe Community Housing Trust. I'm the project manager. About last August I was amazed, almost fell on the floor when I was approached by Mr. Sommer offering us the HOP units. We did not solicit these. They were given to us through the Brutsche and Associates. Not only will there be these 14 units in previous developments I believe we're going to get six for a total of 20 units. These are the only affordable units on that side of town. Also, they will meet the eligibility requirements of income. These are working people.

Just to let you know, we have County employees, City employees, teachers, policemen and workers. Your brother, your sister, who are applying for these units. Unfortunately, with 20 units we already have a waiting list of 60 families looking. They will be built by the developer. They are not fancy things but they're beautiful. Then through the HOP, there will be an affordability standard maintained through it so there will not be profiteering. Because that family has to stay with it originally. There's a process to protect these from mass speculation. I myself have seen the units, have seen the area. I think they are managing it quite well and I do urge you to move forward on this because as you know we still have a crisis in housing and I feel that when it comes to solving this problem, remember, these are common problems so there must be shared solutions. Everybody takes a little bit and gets a little. Thank you.

CHAIRMAN SULLIVAN: Thank you. Who would like to go next?

Commissioner Anaya is watching on TV so don't worry. He hears you.

[Previously sworn, Janet Degan testified as follows:]

JANET DEGAN: Janet Degan, 2125 Paseo Primero. The Grevey property is not eligible for City water. Attached is the City resolution number 16, 1994, which includes the Grevey property from eligibility from City water. This was not submitted in the EZC or EZA hearings so it's very important that you review this agreement. This information has been withheld from you by Summit Properties' lawyer. Within the urban boundary areas eligible for City water is Hyde Park Estates I, II, and III, Ten Thousand Waves, Rancho Elisa, Summit North and Summit South. The Grevey property is not inside the urban boundary area and is not eligible for City water. The water issue alone is reason enough for turning down this development. There are other issues to reconsider.

The proposed development violates key elements of the neighborhood plan adopted by EZA Ordinance 1994-2 amendment, effective April 15, 1994 incorporating the Hyde Park Road Planning Group's neighborhood plan. Although Summit Properties is currently disregarding many key factors of the neighborhood plan they co-authored, agreed to, and signed the neighborhood plan on March 30, 1993 and are presenting that there are elements in the neighborhood plan that they aren't following.

There have been numerous misrepresentations by the development team claiming they

have approval from the neighborhood. This was an informational meeting of a schematic plan, the one they referred to on August 16th, attended by a handful of neighbors and Karl Sommer claims there was a vote. There was no vote. The plan presented showed no contours. The road configuration was entirely different. It was a barely legible overlay on a very dark aerial photograph. In an agreement dated last year there was reference to the Grevey property and a stipulation requiring that Summit Properties must present development plans for review and approval by the Hyde Park Road Planning Group. This never occurred.

The neighborhood plan also requires a development and review process with the neighborhood plan which has not happened. 230 people who use this region or appreciate it have signed a petition for a development moratorium. It was zoned between the city and the national forest because of concerns of more development in a major fire zone in a drought with damaged forests losing potential value for open space, increased erosion potential on steep slopes, water issues, significant archeological sites, the denigration of the corridor protection zone. A very key element of the neighborhood plan which is totally ignored by this development.

We need to maintain the safety and integrity of the scenic byways. With densities and open space that may contain the rural mountain environment, trail and open space usage, adherence to the neighborhood plan and an open space acquisition plan. I had further details on how it doesn't fit the neighborhood plan but I don't think that I have the time to say them in this three minutes.

CHAIRMAN SULLIVAN: Thank you, Ms. Degan. Could you give a copy of this to the Clerk?

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Montoya.

COMMISSIONER MONTOYA: Ms. Degan, of those 230 people, how many live in that area?

MS. DEGAN: Oh, on the petition?

COMMISSIONER MONTOYA: Yes.

MS. DEGAN: Oh, it's area wide. It's citywide, countywide. On the petitions you'll see the addresses there, not from just the neighborhood.

COMMISSIONER MONTOYA: Okay.

CHAIRMAN SULLIVAN: Anything else, Commissioner?

COMMISSIONER MONTOYA: No. That's all.

CHAIRMAN SULLIVAN: Thank you, Ms. Degan. Next speaker please.

[Previously sworn, Robert Palmer testified as follows:]

ROBERT PALMER: My name is Robert Palmer. I live at 2068 Paseo Primero. It's near Aztec Springs. It's in this area here bordered by the national forest on the east, the Grevey property on the south and Hyde Park Estates on the west. We have our own water system. And I feel that I would prefer this subdivision did not happen. I'm concerned about density. I request that a decision on this issue be delayed to allow further study and public input which there's been very little over. The coverage in the press has been sort of misrepresented I

think to show it as a fight between two developers. Actually, the real issue has more to do with the highest possible use for this unusual piece of property in an unusual place.

This location and steep terrain suggests to me that preservation of open space or at least a considerable reduction in density would be beneficial, both to the City of Santa Fe and to our neighborhood's rural residential qualities. Representing the Aztec Springs Water Association, I also request that enough tax to the City water system be set aside to accommodate the potential needs of all existing residents in the area as a priority to accommodating any new proposed subdivisions. We've been there a long time and have a stake in our homes and it would be detrimental if we had no other choice, if our water system failed and could not be restored, we feel like we would like to know that there would be a potential to hook into the City system in some way at that time.

We don't want to do that now, but we may need to in the future. I don't want to just be told that I have to buy a truck with a tank on it because the City has no more room to let us in. I feel like the system was installed for the benefit of everybody who served on that Hyde Park Road and it should be taken into account those of us who've been there a long time. That's all. Thank you very much.

CHAIRMAN SULLIVAN: Thank you, sir.

[Previously sworn, Ray Olson testified as follows:]

RAY OLSON: My name is Ray Olson, 1448 Novato Ridge, Santa Fe Summit in Santa Fe. I'm under oath. I am also on the HPRPG. I'm a voting member. There seems to be an impression that the HPRPG rejects or doesn't approve this project. The HPRPG has to have unanimous decision in order to make that statement and they don't have mine. And I am a voting member. There were four voting members at that meeting on August 16th. Typically, what happens when a member, any member, decides that there's something alarming about a development, the voting members are called together and asked to do something about it. There was no call to arms. Nobody got concerned as a result of that meeting where that plan was presented and there were at least four of us there.

When I see a piece of property like the Grevey property and I know that it's up for sale, has been for a while, and I see a developer come along that is going to do a good job, an acceptable job, a prime job, then I feel pretty confident that he's the one that ought to develop that property. And Mr. Brutsche has proven in the past that when he takes on a project, he minimizes the impact on the local people and he is exceptionally beneficial to the society. His donations, his giving of land is exceptional in this area. I definitely think that you ought to approve his project. Thank you.

CHAIRMAN SULLIVAN: Thank you, Mr. Olson.

COMMISSIONER MONTROYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Montoya.

COMMISSIONER MONTROYA: Mr. Olson, regarding the five members of the HPRPG, approximately how many people do you represent?

MR. OLSON: I am a co-member of the Santa Fe Summit Homeowners Association. We only get one vote. One of us has to be there to vote. And there are actually, I

believe, six now because we were accepted into that group in May of 2002. And I know that there's a fellow named Tichman that's over on, I think Hyde Park III, and he was not at the meeting. So I would guess that there are about six. We have in the Summit 65 current members. So my representation would be for those 65 people. Now I'm not speaking here tonight as a representative of HPRG. Because we haven't taken any action to do that. I don't know how many people are in the other groups.

COMMISSIONER MONTOYA: Okay. Thank you.

CHAIRMAN SULLIVAN: Okay. Anyone else like to speak on this project?

[Previously sworn, Karen Merriwether Bailey testified as follows:]

KAREN MERRIWETHER BAILEY: Good evening. My name is Karen Merriwether Bailey and I am the open space chair and vice president of the Canyon Neighborhood Association. My address is 1677 Cerro Gordo Road in Santa Fe. I just wanted to speak on behalf of our experience as the Canyon Association. As was mentioned earlier this evening, our concern is the preservation of the integrity and beauty of the Santa Fe Canyon. And that's one of the focuses of our organization. We've had several different issues that we had to work on over the past few years. It's become almost a career, preserving the Santa Fe Canyon and we have been watching the Grevey tract for several years now, when we first saw that it was advertised for sale in the *New Mexican*. And when we learned that this project was begun, Mr. Brutsche, there were several people before this who were interested in developing the project and it did not evolve.

And when we learned that Mr. Brutsche was going to develop this we spoke with his representatives and they came and made a presentation to the Canyon Neighborhood Association, and people were appalled and shared their comments, what troubled them. Mainly it was the visibility of development on the ridge of the Santa Fe Canyon. And so after several meetings and negotiations, the canyon has been protected through just conversations and presentations that have been made. People's comments and working with Brutsche and Associates to preserve the Santa Fe Canyon.

What's happened is that they have moved the development off the ridge into the Hyde Park area. I can understand the concerns of the Hyde Park people but I also feel that this canyon, this property is for sale and it's going to be developed by someone sooner or later and even members of the Hyde Park Homeowners Association have recognized that. So for us, it's a way of preserving the Santa Fe Canyon and that's our concern. And I am sure that it's hard for the people in Hyde Park and I feel for them but I really can't get involved in their side of the discussion because we've been working on this for several years. What we have worked out in the land use agreement and in the covenants has turned out to be a very good thing, not only for the Canyon Neighborhood Association but for the community of Santa Fe because this canyon belongs to the community. And it's a resource, it's an asset, it's a treasure. Historically and today. And so for us, from our viewpoint, we feel that this project as it's worked out is in fact preserving the Santa Fe Canyon and we're very grateful for that. Thank you so much.

COMMISSIONER MONTOYA: Mr. Chair

CHAIRMAN SULLIVAN: Question from Commissioner Montoya.

COMMISSIONER MONTOYA: How many members are part of the Canyon Neighborhood Association?

[Previously sworn, Rich Ellenburg testified as follows:]

RICH ELLENBURG: My name is Rich Ellenburg. I reside at 1714 Canyon Road. We have about 125 members. Our mailing list of families is about 650.

COMMISSIONER MONTOYA: Okay. And Mr. Ellenburg, where do the majority of those members reside?

MR. ELLENBURG: Most reside off of Canyon Road or off of Canyon Road and off of Cerro Gordo. The neighborhood boundaries are all the streets that come off Cerro Gordo and all the streets that come off Canyon Road, plus a number of the area that goes over to Rio Rancho School and we pick up a little bit of the area just below us, around Cristo Rey Church where the neighborhood organization wasn't very strong and they've elected to join with us.

COMMISSIONER MONTOYA: Thank you. Thank you.

MS. MERRIWETHER BAILEY: So basically it's the entrance from the canyon from Cerro Gordo and Upper Canyon and everything else.

COMMISSIONER MONTOYA: Thank you.

CHAIRMAN SULLIVAN: All right. Next speaker.

[Previously sworn, Carolyn Schmyer testified as follows:]

CAROLYN SCHMYER: I'm Carolyn Schmyer. I live at 3200 Camino Lisa, Santa Fe, 87501. Living there on a cul-de-sac at the end of Camino Lisa, I'm the one that has the primo view that is to come when this development takes place if it does. And that is not a negative as far as I'm concerned. I have some really strong feelings about this whole thing. To begin with I have lived for six years now in Hyde Park Estates and loved it. I love the forest. I grew up in Tennessee in the trees and this is the closest I could get to getting my trees back again and I love that area and have tried to preserve it.

Ten years before that I lived across the road at Rancho Elisa and I worked hard at Rancho Elisa with the neighborhood planning group. I was one of the pioneers in that and you'll find my signature on one of those sheets signing off on the plan. I moved across the road and have been extremely happy there. None of us like to see changes, I think, especially where we have a lot of green around us. But I, as I get older perhaps, am becoming more of a realist and I'm not going to argue with the inevitable. That property is a beautiful piece. It is going to be built on whether it's now, whether it's later, it is going to be developed and if it is, I want Ralph Brutsche to be the one to do it.

Having been in that area for that length of time, when I was at Rancho Elisa, I watched High Summit go in. I always walked my dog up there. I walked those trails. I watched road by road as they were built. I went house by house as the houses went up. And what I say was that Mr. Brutsche really respected the environment. He did the impossible. I would never have believed it. He maintained open space and his work was with a lot of integrity and skill. He managed to do the impossible and actually enhance a lot of the natural attributes of the area. I've seen the same thing happen over in Summit South. I've walked Summit South. Same deal

putting in the road. I stood over there and I've looked over at my place. I have a good feeling. If anybody's going to develop there and I want it to be with someone that has the integrity and skill that is involved with this Summit development. So I totally support what's happening, even if it is in my backyard. Thank you.

CHAIRMAN SULLIVAN: Thank you. Anyone else who'd like to speak in favor of or in opposition to the project? Okay, I don't see anyone. That will close the public hearing. And we'll move this project back to the Commission for final discussion. Let me just say that the only thing that bothers me and the process I think that the applicant has gone through, I think is fine, whether it's expedited or whether it's not. But really the only concern I have is that some of these lots are down as little as .3 and .4 acres on this extremely steep slope and I know they're somewhat larger in Hyde Park Estates. I just have a concern we're going through preliminary, final plat and everything here and just looking at these plats without walking every centerline of these proposed roads, I just have a concern that we're creating an appropriate density there with lots that small. That's my major concern with this. Any other comments from the Commission?

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Anaya.

COMMISSIONER ANAYA: I just want to let the public know that we've been here since three o'clock and when I get up and walk into the other room, it's not that I was trying to ignore you.

CHAIRMAN SULLIVAN: He was watching it on TV. I saw him.

COMMISSIONER ANAYA: I was watching it on TV. I was just trying to stretch my legs a little. I just want to let the public know that. Thank you, Mr. Chair.

CHAIRMAN SULLIVAN: I said you were watching it on TV. We have to take a break some time. Anyone else want to comment, questions?

COMMISSIONER DURAN: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Duran.

COMMISSIONER DURAN: I'd like to make a motion and hopefully I'll remember all the things I would like to incorporate in this motion. So I would like to make a motion that we approve EZ Case #S 03-4770 with staff's conditions, with City conditions, with EZC conditions and EZA conditions. I think that should cover it.

COMMISSIONER ANAYA: Second.

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN SULLIVAN: Motion and a second. Discussion? Commissioner Montoya.

COMMISSIONER MONTOYA: Is it the EZA that has the reflectivity part of their conditions?

COMMISSIONER DURAN: Any changes? Yes.

COMMISSIONER MONTOYA: Okay. And the applicant has already stated they feel --

MR. SOMMER: Commissioner Montoya, yes. Correct. All of the conditions

that he talked about and I think he said reflectivity. We'll include that and I understand, I'm saying on the record that Commissioner Duran's motion includes that condition I talked about being with the reflectivity and rooftop stuff. So the record's clear. I know that's part of it.

COMMISSIONER MONTOYA: Okay.

MR. SOMMER: Is that what you were asking?

COMMISSIONER MONTOYA: Yes.

COMMISSIONER DURAN: The other thing is it does include your agreement with the Canyon Association.

MR. SOMMER: It does, as a specific condition.

COMMISSIONER DURAN: Right.

MR. SOMMER: All of the things that I put on the record earlier. If we could clarify one thing, as I said, this meeting has been noticed up and requested by us for the variances as we applied for. And staff has supported those variances, all of them, the ones in front of the EZA, in front of the EZC, and in front of you all, and they include the variances to 30 percent slopes and to the 50 percent rule. So if that was included in you motion we would appreciate it.

COMMISSIONER DURAN: It was.

CHAIRMAN SULLIVAN: Okay. Any more discussion? And again, I agree with those who have said in this development that probably it's going to occur regardless and we would like to see someone do it properly. I think it's too dense. That's my personal opinion.

The motion to approve EZ Case #S 03-4770 passed by majority 3-1 voice vote with Commissioner Sullivan casting the negative vote.

CHAIRMAN SULLIVAN: I think our Clerk has left, but I had forgotten during the work chase. I had a letter that I wanted to enter into the record that was submitted and wasn't mentioned and I just want to give that to the Clerk. Mr. Ross, would you give that to the Clerk.

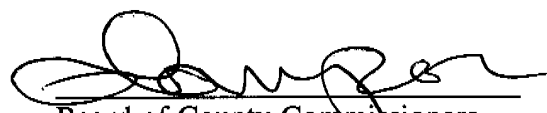
MR. ROSS: Sure will, Mr. Chair.

CHAIRMAN SULLIVAN: Okay. Thank you. All right. I think it's now coming to the witching hour. If we stay here six more minutes, gentleman another day will have passed and we'll get another day of per diem.

ADJOURNMENT

Chairman Sullivan declared this meeting adjourned at approximately 11:55 p.m.

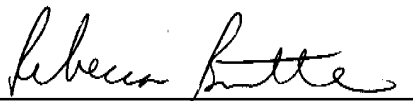
Approved by:

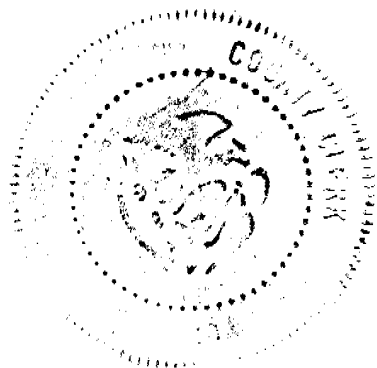

Board of County Commissioners
, Chairman
Paul Campos

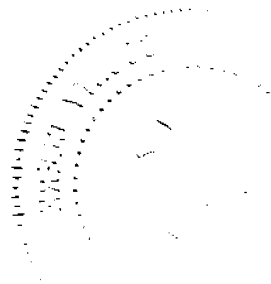
Respectfully submitted:


Karen Farrell, Commission Reporter

ATTEST TO:


REBECCA BUSTAMANTE
SANTA FE COUNTY CLERK





DECLARATION OF COVENANTS AND RESTRICTIONS
FOR TRACT

THIS DECLARATION is made in Santa Fe, New Mexico, this 9th day of December, 1998 by Charlotte Capling, Neil and Suzanne Miller and Dan and Terresa Clint hereinafter for convenience referred to as the "Owner(s)".

WITNESSED THAT:

WHEREAS, Charlotte Capling, Neil and Suzanne Miller and Terresa Clint are owner of real property in Santa Fe County, New Mexico, which property includes Lot 2-A containing 3.10 acres, Lot 2-B containing 2.5 acres, Lot 2-C containing 2.5 acres, Lot 2-D containing 3.0 acres, Lot 2D containing 4.5 acres, Lot 2 Tract A containing 3.8 acres, Lot 2 Tract B containing 4.6 acres, and Lot 1A containing 3.3 acres more or less, according to the Plat of Survey entitled Charlotte Capling, Neil and Suzanne Miller and Terresa Clint referred to hereinafter at Article I; and

WHEREAS, the Owners desire to provide for certain water conserving covenants and measures to preserve and maintain the single-family residential character and value of the property; and

WHEREAS, the Owners desire and intend that the owners, tenants, mortgagees, occupants and other persons hereinafter acquiring any interest in said property shall at all times enjoy the benefits of, and shall hold their interest subject to, the rights and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan for the proper and beneficial use of the property.

NOW THEREFORE, the Owners declare, covenant, and agree as follows:

ARTICLE I

Property Subject to this Declaration

The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is legally described as Lots 2-A, 2-B, 2-C, 2-D, 2D, Lot 2 Tract A, Lot 2 Tract B, and Lot 1A and containing a combined total of 27.5 acres, more or less, in Section 4,5,8 and 9, Township 17 North, Range 9 East, N.M.P.M., Santa Fe County, New Mexico, according to the Plat of Survey for Charlotte Capling, Neil and Suzanne miller and Dan and Terresa Clint by Rick Chatroop, N.M.L.S. #11011, dated October 26, 1998, recorded 12-22, 1998, under reception No. 1054-380, Plat Book 402, Page 008, in the records of Santa Fe County, New Mexico (the "Plat").

ARTICLE II

Water Restrictive Covenants

The following water restrictive covenants shall apply to the use and occupancy of Lots 2-A, 2-B, 2-C, 2-D, 1A, 2D, Lot 2 Tract A, and Lot 2 Tract B on the plat.

(A) Domestic water use is restricted to .25 acre-feet per year per Lots 2-A, 2-B, 2-C, 2-D, 1A, 2D, Lot 2 Tract A, and Lot 2 Tract B as required by the Santa Fe County Land Development Code.

(B) Water conserving appliances shall be installed and used at the time of construction or replacement of appliances.

- (C) Toilets shall be of a type designed for use of no more than 1.6 gallons per flush.
- (D) Bathtubs and lavatory fixtures shall be fitted with faucets with a maximum capacity of 2.5 gallons per minute. Shower heads shall have a capacity of no more than 2.5 gallons per minute.
- (E) Hot water pipes shall be insulated.
- (F) Evaporative coolers must circulate bleed-off water.
- (G) No more than one automatic dishwasher per dwelling may be used, provided it is a model designed to use no more than 13 gallons per cycle and it has a cycle adjustment which allows reduced amounts of water to be used for reduced loads.
- (H) No more than one automatic clothes washing machine per dwelling unit may be used, provided it is a model which uses no more than 13 gallons per cycle and which has a cycle or water level adjustments which permits reduced amounts of water to be used for reduced loads.
- (I) Low water use landscaping techniques applying the principles of xeriscaping shall be utilized. Drip irrigation is encouraged whenever possible. Low water use grasses, trees and shrubs may be watered as needed during the first and second years of their growth to become established. Thereafter, such vegetation shall receive only minimal water as needed by each species.
- (J) Lawns of non-native grasses shall not exceed 800 square feet per parcel and shall only be watered with rain water collected by means confined to the property or with recycled household gray water. Gray water systems shall meet the requirements of the New Mexico Construction Industries Division and the Uniform Plumbing Code.
- (K) Swimming pools, of a permanent or temporary nature, are not permitted. Temporary wading pools of a diameter not to exceed eight feet and a depth not to exceed one foot and covered spas are acceptable at each dwelling unit.
- (L) All wells on the property shall be metered with a Santa Fe County approved meter. Meter readings shall be recorded by the property owner annually within two weeks of January 1st. Meter readings shall be provided to Santa Fe County at their request. Proof of meter installation must be submitted with a Santa Fe County Development Building Permit application.

ARTICLE III

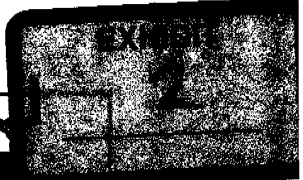
General Provisions

3.1 Duration; Covenants Running with the Land. The covenants of this Declaration shall run with and bind the land, shall inure to the benefit of and be enforceable by the owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns.

3.2 Enforcement. Enforcement of these covenants and restrictions shall be by any owner of property as shown on the Plat in any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction or to restrain any such violation. Any failure by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. If an owner prevails in any action against any person or persons to enforce any provision hereof, the prevailing owner shall be entitled to recover from such person or persons his costs and reasonable attorneys fees.

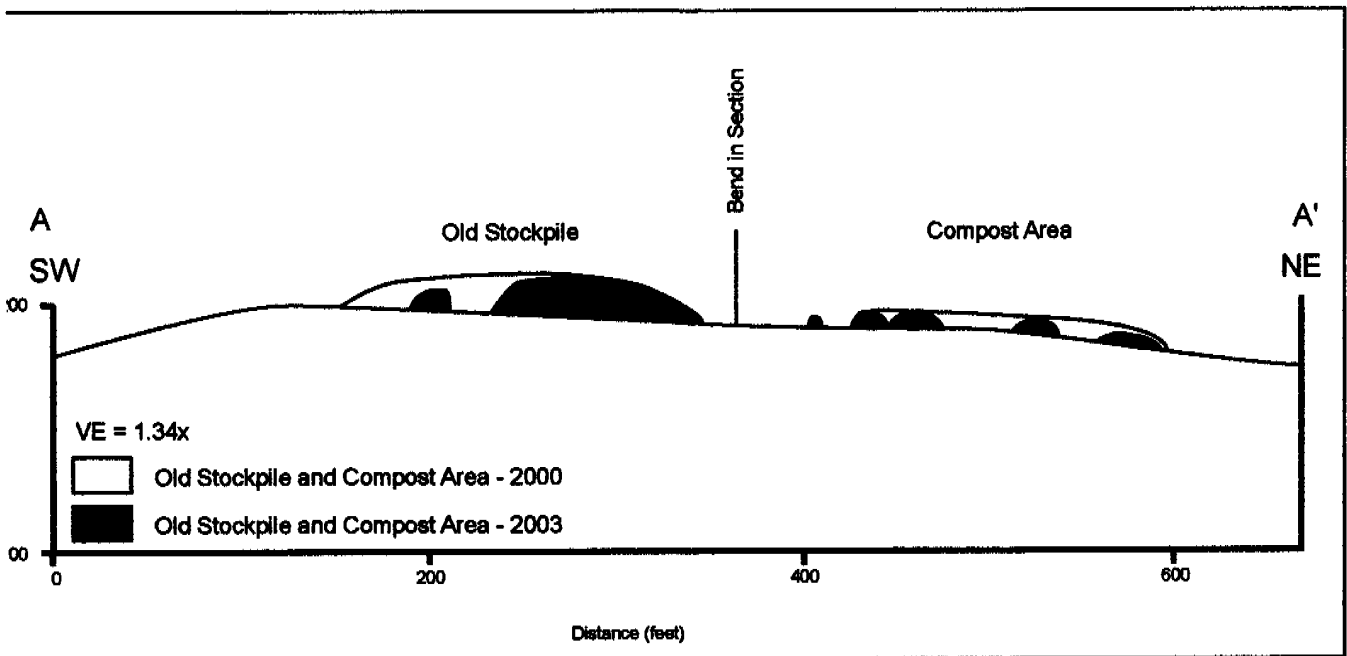
3.3 Severability. The invalidity or unenforceability of any covenant, restriction, term or other provision hereof as determined by a court of competent jurisdiction shall not impair or adversely affect the validity or enforceability of any other covenant, restriction, term or provision hereof, which shall be and remain valid and enforceable to the fullest extent permitted by law.

3.4 Miscellaneous. This Declaration shall be governed by and interpreted under the laws of the State of New Mexico. This Declaration shall be binding upon each tract owner, his successors and assigns.



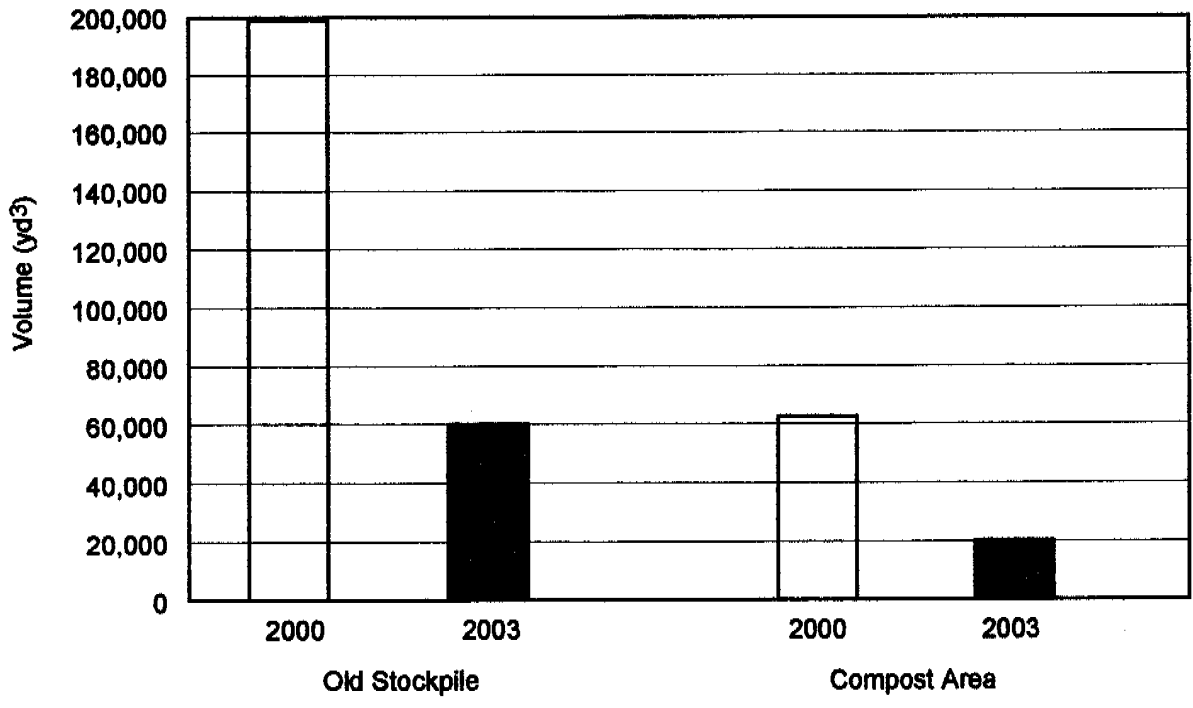
GLORIETA GEOSCIENCE, INC.
October, 2003

I Compost Area Extent anta Fe Downs

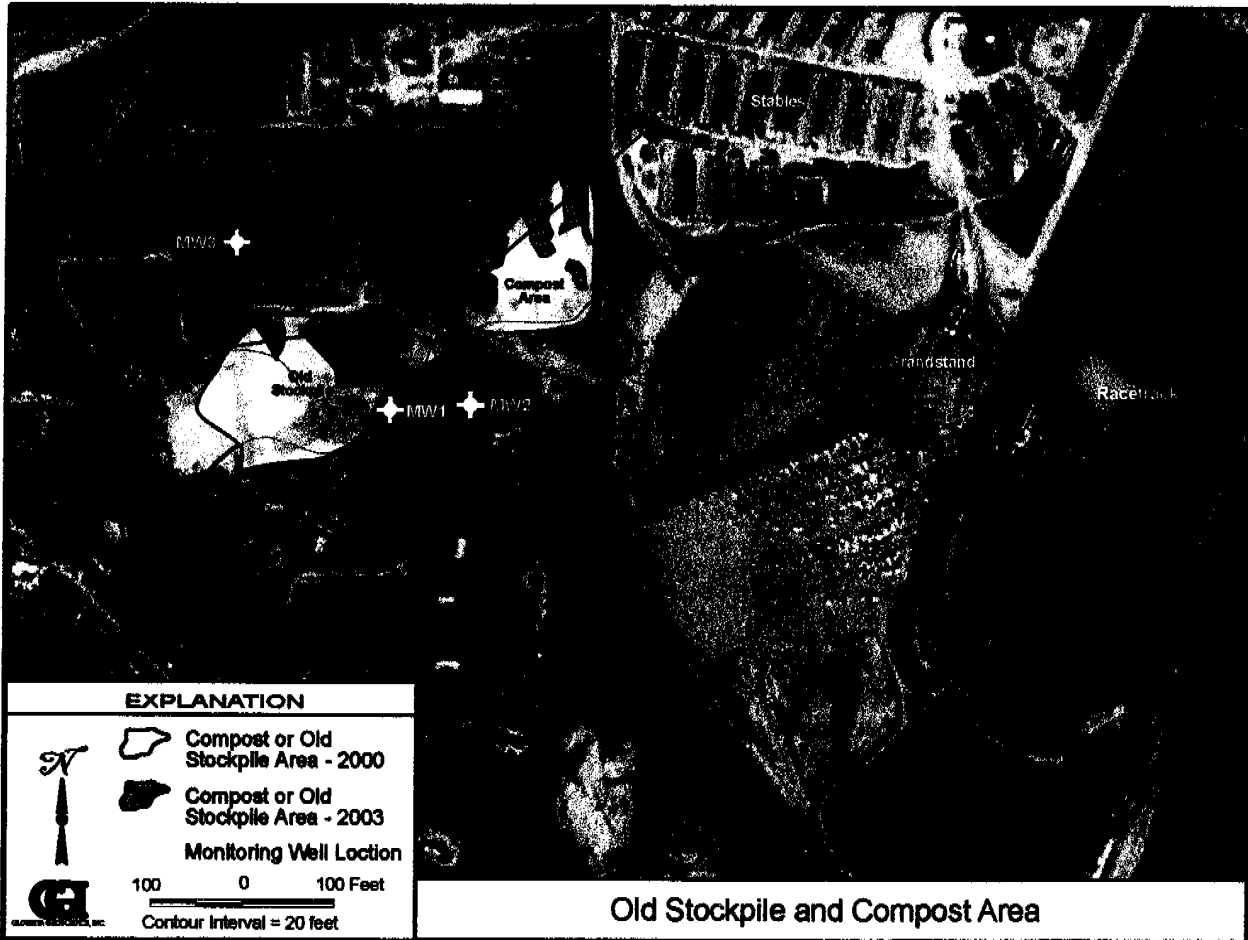


Schematic Cross Section of the Extent of Old Stockpile and Compost Area Coverage

Old Stockpile and Compost Area Volume

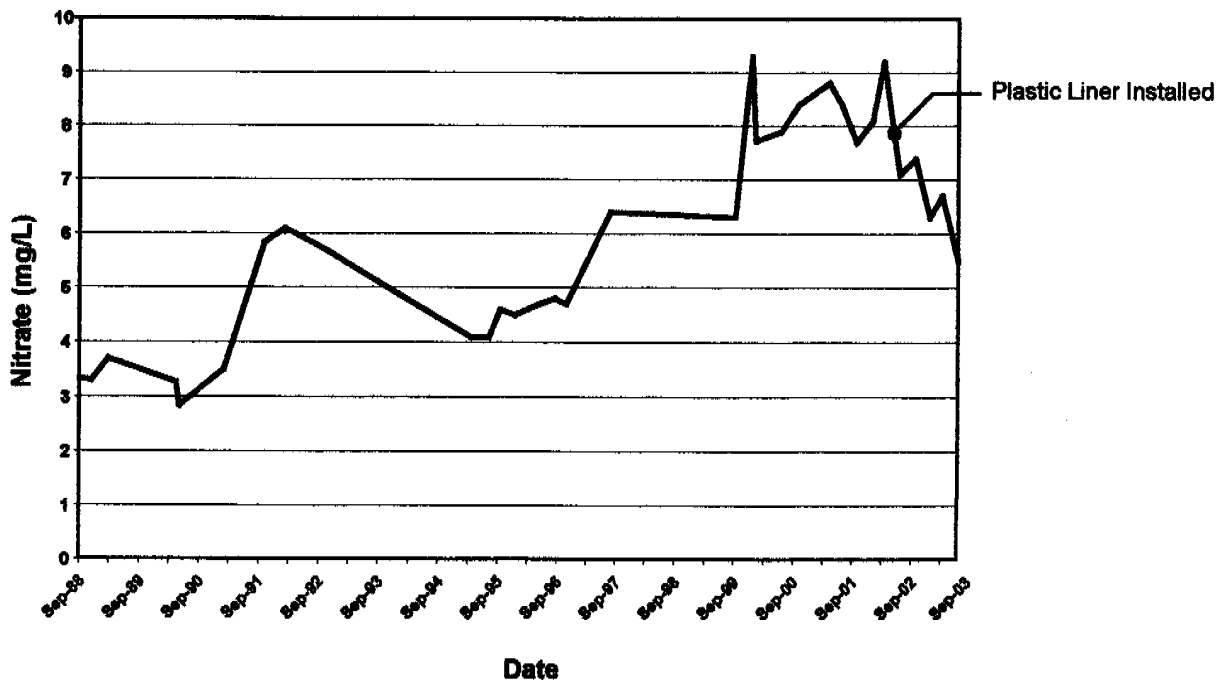


Changes in Old Stockpile and from 2000 to 2003 - S

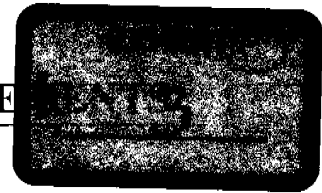


Elevation (feet)

Nitrate Concentration - Monitoring Well #3



HIGH SUMMIT III DENSITY AND OPEN SPACE REQUIRE



- **PROJECT AREA = 154 ACRES**
- **TOTAL DWELLING UNITS = 107 (ON 105 LOTS)**

NUMBER OF HOP HOMES = 14
NUMBER OF MARKET LOTS = 93 (ON 91 LOTS)

- **REQUIRED ACREAGE FOR AFFORDABLE HOMES = 0**
- **DENSITY @ 2.5 ACRES/LOT = $154/2.5 = 61.6$ LOTS**
- **OPEN SPACE RATIO OF 45% USED**

$154 \text{ ACRES} \times 45\% = 69.3 \text{ ACRES REQUIRED}$

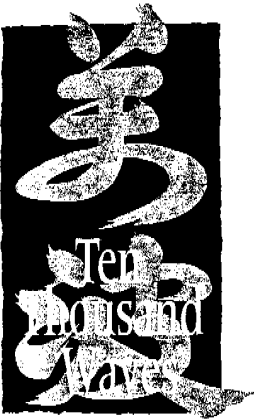
- **DENSITY BONUS IS 60%**

$61.6 \text{ LOTS} \times 60\% = 39.96 \text{ LOTS}$

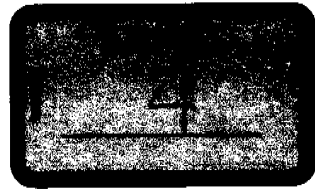
- **ALLOWABLE LOTS**

$39.96 + 61.6 = 98.56$

	REQUIRED/ ALLOWED	PROPOSED
OPEN SPACE	69.3 ACRES	76 ACRES
NUMBER OF HOMES	98	93



www.tenthousandwaves.com



December 3, 2003

Vicki Lucero
Santa Fe County
hand-delivered

Dear Vicki:

As you may know, a large contingent of the Hyde Park neighborhood is very concerned about the excessive density and variances for over 70% of the lots in the proposed High Summit III development. We feel that the EZ Ordinance was never designed to give wholesale variances to huge projects.

Also, there seems to have been a mistake made in the calculations for the open space density bonus. I've enclosed p.5-13 of the EZO, which describes how the density bonus is calculated. c.4 says that the number of acres is to be multiplied by the open space ratio.

High Summit III is claiming an 80% ratio. $150 \text{ acres} \times 80\% = 120 \text{ acres}$ open space necessary. By the developer's own computations, there are only 91.54 acres of open space in the project. He obviously does not qualify for an 80% density bonus, according to this formula.

In addition, 34.34 acres of the open space total are 'private open space' within lots. Page 5-12 of the EZO states that *'The permanent open space may be dedicated to the public or to an open space land trust or other non-profit management entity or for common use to a home owners' association as an open space easement'*. It is clear that open space within lots does not fit within any of those descriptions. That means that the High Summit III project only contains 57.2 acres of 'real' open space.

Since the density of the proposal was based on faulty calculations, we suggest that it needs to be reworked before submission to the EZA.

Sincerely,

Duke Klaucek, for the Hyde Park Road Initiative

tel 505.982.9304
fax 505.989.5077
Post Office Box 10200
Santa Fe, NM 87504

www.tenthousandwaves.com

housing shall be arranged in clusters. The gross density to be permitted by the underlying zoning for the entire tract will be transferred to a designated area within the tract. The remaining area will be designated as open space and will be left in its natural state. If imported water is utilized, a density bonus shall be allowed, in exchange for additional open space.

2. Open Space Preservation: Applicability

a. Open space preservation is applicable to all subdivisions or land divisions.

b. Any development that will utilize imported water and is proposing to set aside more than the minimum amount of permanent open space as set forth in sub-section 3 below, may be allowed a bonus in density, unless the parcel to be developed is located in the Mountain Special Review District. See Table 1, Density Bonus Options in sub-section 3 below, for bonus percentages and assigned open space ratios.

c. Existing parcels, as of the date of this Ordinance, or applications for residential uses on existing parcels pursuant to Section 5.2 A.1 and Inheritance and Family Transfer subdivisions shall be exempt from this provision; and

d. In creating new lots in the Mountain Special Review District, clustering of Buildable Areas and Disturbed Areas shall be encouraged so as to utilize community water and wastewater systems, shorten driveways, shorten and share access roads and protect the visual integrity and open space of the area, as it existed prior to development.

3. Required Open Space

a. In areas of the Extraterritorial Zoning District that are not designated as an Urban Area or Traditional Community or other zoning district that is adopted by the EZA, any proposed subdivision or land division will be required to preserve no less than thirty percent (30%) of the entire tract as permanent open space.

b. The applicable density for the entire tract is transferred to that portion of the tract designated for development (See Section 5.2 B).

c. The portion of the tract to be preserved for permanent open space is subject to the open space preservation criteria and standards set forth by Section 5.2 D 5.

d. The permanent open space may be dedicated to the public or to an open space land trust or other non-profit management entity or for common use to a homeowners' association as an open space easement.

e. The permanent open space shall be covenanted and restricted from further development, except where due to terrain or soils constraints, easements to accommodate liquid waste disposal or drainage may be created in the open space.

f. The open space may include, but is not limited to, flood plains, marshy areas, wetlands, natural drainage areas, steeply sloping areas, rock outcroppings, unusual natural features, scenic view areas, designated escarpment protection areas, or buffer zone areas between more intensely developed areas of a project.

4. The Density Bonus Options

a. A density bonus is an increase in the percentage of the number of dwelling units or lots allowed by the underlying zoning. The applicable underlying zoning for residential uses in the Extraterritorial

Zoning District is set forth in Section 5.2.A, 1 through 6, and for Metropolitan Areas in 5.2.A, 7. A bonus in density is not applicable within a Traditional Community, an Urban Area, or any other zoning District adopted by the EZA where permitted density is greater than one dwelling unit to the acre.

b. Imported water must be utilized.

c. Where water supply for a proposed development will be from imported sources, either from the Regional Water System or a community water system utilizing imported water as defined by this Ordinance, an increase in the base density, or density bonus, shall be allowed. In exchange, an increased amount of open space, or an open space ratio, shall be imposed.

1) The minimum lot size where imported water is utilized in the Extraterritorial Zoning District is 2.5 acres per dwelling unit, except in Metro Basin areas, where the minimum lot size per dwelling unit is 1.0 acre.

2) The base density is calculated by dividing 2.5 into the number of acres proposed for development (or 1.0 as applicable in Metro Basin areas).

3) The density bonus is calculated by multiplying the base density by the bonus percentage and adding the result to the base density. See Bonus percentages below and Appendix C for sample calculations.

4) The open space is calculated by multiplying the open space ratio by the number of acres proposed for development and subtracting those acres from the total. See Open Space Ratios below and Appendix C for sample calculations.

d. The thirty percent (30%) standard open space ratio required by Section 5.2.D.3 above, may be counted in the open space portion of the tract. Where applicable, the park or open space dedication requirement may also be included.

e. All density bonus applications are subject to the density transfer provisions of Section 5.2.B, Density Transfer.

f. The density bonus options are:

TABLE 1, DENSITY BONUS OPTIONS

DENSITY BONUS	OPEN SPACE RATIO
60%	45%
120%	60%
150%	80%

g. The lots or dwelling units must be clustered (see density transfer), and the portion of the tract left in permanent open space shall be subject to the open space criteria and standards set forth in Section 5.2.D.

h. The minimum tract which may apply for the density bonus/open space preservation option is a multiple of four (4) times the minimum lot area of the underlying zoning or permitted residential density